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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204122
Party	Plaintiff Empire State Building Company L.L.C.
Correspondence Address	ERIC J SHIMANOFF COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES ejs@cll.com, lmr@cll.com, wmb@cll.com, trademark@cll.com, fxm@cll.com, mlk@cll.com
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Date	03/03/2016
Attachments	Applicant Trial Testimony for Filing obo Opposer.pdf(1736436 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

ESRT EMPIRE STATE BUILDING, L.L.C.,	X	
	:	
Opposer,	:	Opposition No. 91204122
	:	
v.	:	
	:	
MICHAEL LIANG,	:	
	:	
Applicant.	:	
	:	
	X	
Commissioner for Trademarks Attn: Trademark Trial and Appeal Board P.O. Box 1451 Alexandria, VA 22313-1451		

**OPPOSER’S NOTICE OF FILING OF TRIAL TESTIMONY
ON BEHALF OF APPLICANT**

PLEASE TAKE NOTICE that pursuant to 37 CFR §§ 2.123(b) and 2.125, TBMP 703.01(b), Opposer ESRT Empire State Building, L.L.C. (“ESB”), is filing deposition trial testimony on behalf of Applicant Michael Liang (“Applicant”).

Opposer’s counsel has contacted Applicant’s counsel several times to inform him of his obligation under TBMP 703.01(b) to file with the Trademark Trial and Appeal Board the transcripts of the deposition trial testimony taken on May 22, 2015. Despite Opposer’s counsel’s efforts, Applicant has still failed to file the deposition transcripts, and Opposer has relied upon statements made in these depositions in its trial brief. Now, the opposition is ready for final decision.

Therefore, to insure the trial record is complete before decision, Opposer is filing the following trial testimony on Applicant's behalf:

- Testimony deposition transcript of Xuefeng Yang, taken May 22, 2015 and accompanying Exhibits 1 through 6.
- Testimony deposition transcript of Michael Liang, Applicant, taken May 22, 2015 and accompanying Exhibits 7 through 8.

Dated: New York, New York
March 3, 2016

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposers

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing
OPPOSER'S NOTICE OF FILING OF TRIAL TESTIMONY ON BEHALF OF
APPLICANT was served on Applicant's Attorney of Record on March 3, 2016 by First
Class Mail, postage prepaid, addressed to:

David Yan, Esq.
Law Offices of David Yan
136-20 38th Avenue, Suite 11E
Flushing, New York 11354-4232

Dated: New York, New York
March 3, 2016

/Lindsay Rodman/
Lindsay M. Rodman

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IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed January 8, 2011
For Mark: NYC BEER LAGER and Design

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-----X
ESRT EMPIRE STATE BUILDING, L.L.C.,

Opposer,

v.

Opposition No.
91204122

MICHAEL LIANG,

Applicant.

-----X

DATE: May 22, 2015

TIME: 10:20 a.m.

TRIAL TESTIMONY of a Non-Party Witness,
XUEFENG YANG, taken by the Respective
Parties, pursuant to Notice, held at the
Offices of Diamond Midtown East, 275 Madison
Avenue, Suite 6B, New York, New York 10016,
before Richard Aurelio, a Notary Public of
the State of New York.

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A P P E A R A N C E S:

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ALSO PRESENT:

BIN YUAN, MANDARIN INTERPRETER

* * *

1 X. YANG

2 B I N Y U A N, was duly sworn to
3 interpret the questions from English into
4 Mandarin, and the answers from Mandarin into
5 English.

6 X U E F E N G Y A N G, called as a
7 witness, having been duly sworn by a Notary
8 Public, was examined and testified through
9 the interpreter as follows:

10 EXAMINATION BY

11 MR. YAN:

12 Q. Please state your name for the
13 record.

14 A. Xuefeng Yang, X-U-E-F-E-N-G,
15 Y-A-N-G.

16 Q. Where do you reside?

17 A. 56 Farady Drive, Lutherville, MD
18 21093.

19 Q. Mr. Yang, good morning.

20 A. Good morning.

21 Q. My name is David Yan, representing
22 the applicant, Michael Liang, in connection
23 with his application for registration of a
24 trademark.

25 A. Okay.

1 X. YANG

2 Q. You are here today to testify for
3 some matters in connection with his
4 application for a trademark.

5 MR. YAN: If you can mark this as
6 Applicant's Number 1.

7 (Whereupon, the aforementioned
8 Applicant's Notice of Taking Trial
9 Testimony (2 pages) was marked as
10 Applicant's Exhibit 1 for
11 identification as of this date by the
12 Reporter.)

13 Q. (Perusing document.)

14 Mr. Yang, I show you this
15 Applicant's 1. This is a Notice to take
16 trial testimony, and why you're here to
17 offer the testimony. Do you acknowledge the
18 receipt of this notice?

19 A. (Perusing document.)

20 Okay.

21 MR. YAN: So, I just marked the
22 exhibit. Should I make a motion? Do
23 you object to Applicant's Number 1?

24 MR. SHIMANOFF: No, I don't object
25 to this document that you've introduced

1 X. YANG

2 but I'm not sure why you're asking him
3 if he received a Notice --

4 MR. YAN: Well --

5 MR. SHIMANOFF: I have no
6 objection to this Notice. He's here,
7 you said, pursuant to your agreement.
8 Why don't we move on with the testimony
9 since it's already 10:30.

10 Q. I give you a little instruction.
11 I understand that you understand English but
12 since we have the interpreter to assist in
13 the testimony, I want you answer your
14 question in your native language of Chinese.

15 A. Okay.

16 Q. When you answer the questions,
17 please break down your answer in short
18 sentences so that the interpreter can handle
19 your answer and translate correctly.

20 THE WITNESS: Okay (in English).

21 A. Okay. Understood.

22 Q. Also, when you said okay, since
23 that's a -- we only have the interpreter, we
24 don't have a video to record your hand
25 gestures or body gestures, try answer the

1 X. YANG

2 question verbally, either yes, no because we
3 cannot record your nod and any gestures.

4 A. Are we -- is this session
5 recorded?

6 Q. No.

7 A. Okay.

8 Q. What is your relationship with
9 Michael Liang?

10 A. We're friends.

11 Q. How do you know him?

12 A. We met each other in China a long
13 time ago.

14 Q. What are you doing in the United
15 States?

16 A. I'm engaged in travel business
17 and, sometime I'm also a tour guide.

18 Q. Do you know whether Mr. Michael
19 Liang registered trademark?

20 A. I'm aware.

21 MR. YAN: Please mark this as the
22 next exhibit, please.

23 (Whereupon, the aforementioned
24 Trademark electronic search (2 pages)
25 was marked as Applicant's Exhibit 2 for

1 X. YANG

2 identification as of this date by the
3 Reporter.)

4 Q. (Perusing document.)

5 Let me show you this Applicant's
6 Number 2. That's a trademark in this paper.
7 Are you familiar with this trademark
8 (indicating)?

9 MR. SHIMANOFF: I just want to
10 state for the record, since there's no
11 recording, that counsel for applicant
12 was pointing to the design mark in
13 Exhibit 2.

14 A. (Perusing document.)

15 I've seen it before.

16 Q. Do you know who registered this
17 trademark?

18 A. It was Michael Liang.

19 Q. How do you know that?

20 A. He told me.

21 Q. When did he first tell you?

22 A. This -- this is how it happened
23 initially. When he was in the United
24 States, he said that he was looking for me.
25 He said that he wants to engage in beer

1 X. YANG

2 business in the United States. He -- he say
3 he wants to engage in beer business, so that
4 he's considering to getting a -- a trademark
5 but that -- that was long time ago.

6 Q. Then what happened?

7 A. And a while later, he said that
8 there were a few icons that had been
9 designed. And then he -- he ultimately
10 choose this one.

11 MR. SHIMANOFF: Object to that as
12 hearsay.

13 Q. Do you know at the time when he,
14 Mr. Michael Liang, spoke to you, where did
15 work?

16 A. He was working in New York.

17 Q. What entity he worked for?

18 A. AABDC.

19 Q. What does AABDC stand for?

20 A. It's American Business Development
21 Center.

22 THE WITNESS: Asia. Asia.

23 A. It's Asia American Business
24 Development Center.

25 MR. SHIMANOFF: Mr. Yuan, you have

1 X. YANG

2 to say when he speaks in English. You
3 have to put that on the record that he
4 says in English.

5 THE INTERPRETER: The witness
6 speaks in English --

7 MR. SHIMANOFF: Yes, because then
8 you're not translating.

9 THE INTERPRETER: Oh.
10 So, the witness just spoke in
11 English.

12 MR. SHIMANOFF: Then say what he
13 said in English but the reporter
14 doesn't write down what he says, only
15 what you say.

16 THE INTERPRETER: Right.

17 A. So, Asian American Business
18 Development Center.

19 Q. Do you have any relationship with
20 the Asian Business Development Center?

21 A. I have been their -- China's
22 deputy representative.

23 (Whereupon, an off-the-record
24 discussion was held.)

25 A. The title in English should be

1 X. YANG
2 deputy chief representative.

3 THE WITNESS: In China (in
4 English).

5 A. In China.

6 MR. SHIMANOFF: The witness says
7 in English.

8 THE INTERPRETER: The witness says
9 in English.

10 Q. So, when Mr. Liang told you about
11 this trademark and -- did he tell you how
12 did he want to use the trademark?

13 A. He's considering using it for beer
14 business.

15 MR. SHIMANOFF: Hearsay,
16 objection.

17 Q. When you were presented this
18 trademark at that time, did you connect this
19 trademark with any other trademark?

20 A. No. It just says NYC.

21 Q. And do you think this trademark,
22 this logo have anything the same with any
23 other trademark?

24 MR. SHIMANOFF: I'm just going to
25 make a foundation objection; lack of

1 X. YANG

2 personal knowledge, calls for
3 speculation; improper attempt to put in
4 opinion testimony.

5 Go ahead.

6 A. Nothing much. This is a -- a
7 independent item.

8 Q. When first you mentioned you were
9 doing the business in tourism, can you tell
10 us what do you usually do?

11 A. It is just that many teams -- many
12 teams from China that formed tour groups
13 that's visiting United States. So, I would
14 make arrangement for their hotels and make
15 arrangement for their tour guide. And
16 sometime I'll be their tour guide myself.

17 Q. I understand you live in Maryland.
18 How many times you accompany these people
19 from China to New York City?

20 A. Many times.

21 Q. When you accompany these people
22 from China to New York City, where did you
23 usually go?

24 A. Statue of Liberty; Empire State
25 Building; Rockefeller Center; Metropolitan

1 X. YANG

2 Museum of Art; United Nations.

3 Q. Can you tell us how many times you
4 accompanied these tour-people to go to
5 Empire State Building?

6 A. Many times.

7 Q. How much is a ticket for you to
8 get into the Empire State Building?

9 A. Now -- now, it's 32 dollars that
10 they sell by the door.

11 Q. What do you usually do with these
12 tour-people in the Empire State Building?

13 A. We'll get onto the top of the
14 Empire State Building and -- and view the
15 entire cityscape of New York.

16 Q. What does Empire State Building
17 mean to you?

18 MR. SHIMANOFF: Objection. Vague,
19 ambiguous, and it calls for
20 speculation.

21 A. Empire State Building is a very
22 old building of New York City. It was very
23 famous. So, when I'm introduced to them, I
24 would tell them that Empire State Building
25 was built in 1930. It took over a year to

1 X. YANG

2 build it. And that it was President Hoover
3 who presided its opening ceremony.

4 And also -- also, when I mentioned
5 earlier about all the sites that we visit,
6 also include the World Trade Center, Ground
7 Zero site, and also the Wall Street -- the
8 Golden Bull.

9 MR. YAN: I want to mark this as
10 Applicant's Number 3.

11 (Whereupon, the aforementioned
12 drawing (1 page) was marked as
13 Applicant's Exhibit 3 for
14 identification as of this date by the
15 Reporter.)

16 Q. (Perusing document.)

17 Mr. Yang, I show you this one
18 that's marked as Applicant's Number 3.
19 There's a logo in this piece of paper. Do
20 you -- based on your observation, how does
21 this logo resemble any building -- any image
22 of a building in New York City?

23 MR. SHIMANOFF: Just for the
24 record, I am going to object as vague
25 and ambiguous; calls for improper

1 X. YANG

2 opinion testimony.

3 A. (Perusing document.)

4 It's Empire State Building. It
5 looks like Empire State Building.

6 Q. Why is that?

7 A. Everything -- everything about it.
8 With the -- with the -- the -- the -- the
9 tapering roof, it looks like Empire State
10 Building.

11 Q. And let me present you back to
12 Number 2, Applicant's Number 2. Anything in
13 this applicant's logo have any similarity to
14 this Number 3 logo?

15 MR. SHIMANOFF: Same objection.

16 A. Well, first of all -- first of
17 all, that one -- (indicating) -- is -- that
18 one is very small. And it -- cannot tell
19 very clearly.

20 MR. YAN: Just mark this as
21 Applicant's Number 4.

22 (Whereupon, the aforementioned
23 drawing (1 page) was marked as
24 Applicant's Exhibit 4 for
25 identification as of this date by the

1 X. YANG

2 Reporter.)

3 MR. SHIMANOFF: Can we just get on
4 the record, the witness pointing to a
5 specific exhibit when he said it's
6 small, he couldn't tell?

7 THE INTERPRETER: Well, the
8 witness was pointing to Applicant's
9 Exhibit Number 2.

10 MR. SHIMANOFF: Thank you.

11 THE INTERPRETER: I just explain
12 to him.

13 MR. YAN: Before I continue, I
14 want the record to reflect that the
15 Applicant's Number 3 was already
16 admitted into evidence during the trial
17 testimony of the Opposer's testimony as
18 the Opposer's Number 4.

19 Q. (Perusing document.)

20 Mr. Yang, let me show you this
21 Applicant's Number 4.

22 A. (Perusing document.)

23 Okay.

24 Q. This one, it's a -- the logo
25 carved ed out from Applicant's Number 2 logo

1 X. YANG

2 to enlarge it for you to recognize?

3 A. Okay.

4 Q. This one was also part of the
5 Opposer's Trial Exhibit Number 5 already
6 admitted into the evidence.

7 A. This one (indicating)?

8 Q. So, do you know, based on your
9 tourism experience in New York City, does
10 this image of the logo resemble any building
11 in New York City?

12 MR. SHIMANOFF: Same objection.

13 A. It's -- it's -- it's just a piece
14 of architecture because there are so many
15 building in New York City.

16 Q. When you talk to the people to
17 tour Empire State Building, did you ever
18 spend time outside the building to look at
19 the -- the image, the real image of Empire
20 State Building?

21 A. Sometime we did.

22 Q. So --

23 A. Just by the street that we
24 observed.

25 Q. So would it be a -- when you see a

1 X. YANG

2 building -- when you see buildings,
3 skyscrapers in New York City, will you be
4 able to distinguish Empire State Building
5 from the rest of other buildings?

6 MR. SHIMANOFF: Objection.

7 Vague and ambiguous; lack of
8 foundation; calls for improper opinion,
9 and speculation.

10 A. All I can say is just intuitively.
11 For example, here's this -- this building
12 with a tampering roof (indicating).

13 THE INTERPRETER: The -- the
14 witness is pointing at Exhibit 3.

15 A. So, there's a tampering tip on the
16 top.

17 Q. When you come -- when you come to
18 this building to testify today, do you
19 believe this building, 275 Madison Avenue,
20 looks like similar to Empire State Building?

21 MR. SHIMANOFF: Same objection.

22 A. When I -- when I first arrived
23 here, I just glimpsed at it and -- because
24 New York has so many skyscrapers. And --
25 and there are too many of these buildings.

1 X. YANG

2 And there's another building -- what do you
3 call it -- there's another building over
4 there, it -- it also looks some -- some --
5 somewhere like that. Possibly it was
6 Chrysler. I'm not sure.

7 Q. But does this building have any --
8 anything resemble the Applicant's Number 3,
9 the base and the -- this building like the
10 Empire State Building?

11 MR. SHIMANOFF: The building we're
12 in right now?

13 MR. YAN: Yes.

14 MR. SHIMANOFF: Same objection.

15 A. That's different because this
16 building has -- has no tapering tip on the
17 top.

18 Q. Before you entered into this
19 building, did you take your time to look at
20 the image of this building, 275 Madison
21 Avenue?

22 A. I was -- I was in a hurry but --
23 so I didn't really pay close attention,
24 however, it doesn't have a base like that.

25 Q. Before you entered into the Empire

1 X. YANG

2 State Building to take the tour-people for
3 the sightseeing, did you take the time
4 outside of the Empire State Building to look
5 at the image of the Empire State Building?

6 A. For the most part, for the most
7 part because we were in a hurry -- so, we
8 just go in there right away, just -- just
9 that. And a few occasion that we'll be on
10 the street, look at the -- the -- the out --
11 the outside of the building, just like I was
12 entering this building today because I was
13 in a hurry so.

14 Q. But even that you do not spend
15 much time, so how can you -- saw the -- the
16 image of the building, will you be able to
17 distinguish the Empire State Building from
18 the other buildings?

19 MR. SHIMANOFF: Objection.

20 Argumentative; lack of foundation;
21 calls for improper opinion;
22 speculative; vague and ambiguous.

23 A. When we enter to the interior of
24 the building, there's no way for you to make
25 the -- any distinguishing distinguishment.

1 X. YANG

2 Q. I want you to tell us your
3 knowledge -- the outside image, it's not
4 inside, can you tell the difference Empire
5 State Building from the rest of the other
6 buildings?

7 MR. SHIMANOFF: Same objection.

8 A. I -- I should be able to make
9 distinguishment but -- as far as for me, I'm
10 able to make distinguishment but possibly
11 for my clients, they cannot.

12 Q. (Perusing document.)

13 Let's go back to Applicant's
14 Number 4. Do you see this one, the image of
15 Number 4 have any -- has anything resemble
16 any building, skyscrapes in New York City?

17 MR. SHIMANOFF: Same objection.

18 A. (Perusing document.)

19 How should I put it, because New
20 York City has so many skyscrapers and this
21 is just a -- a -- a -- a black image of a
22 building -- it's -- it's, like, people who
23 graffiti on the street making a -- the
24 painting of a -- of a -- of a building.

25 MR. YAN: Mark as Applicant's

1 X. YANG

2 Number 5.

3 (Whereupon, the aforementioned
4 logo (1 page) was marked as Applicant's
5 Exhibit 5 for identification as of this
6 date by the Reporter.)

7 MR. YAN: Let the record to
8 reflect that Applicant's Number 5 is
9 part of the Opposer's Exhibit 5 already
10 admitted into the evidence.

11 Q. (Perusing document.)

12 Mr. Yang, I show you this
13 Applicant's Number 5, a logo. Does this
14 Applicant's Number 5 has anything resemble
15 the logos of Applicant's Number 3?

16 MR. SHIMANOFF: Same objection.

17 A. They -- they look similar.

18 Q. And I ask you to compare the
19 Applicant's Number 4 and Number 5. Does
20 this Applicant's Number 4 have anything to
21 resemble or looks the same as Applicant's
22 Number 5?

23 MR. SHIMANOFF: Same objection.

24 Asked and answered.

25 A. Well, first of all, I -- I have to

1 X. YANG

2 say they're not the -- the -- the same item
3 but they look alike. Because -- because --
4 because there's these stripes there that's
5 not -- not there. And -- and there's these
6 two -- I don't know what that is -- two --
7 two things over there (indicating).

8 THE INTERPRETER: The witness is
9 pointing at -- to -- the Exhibit 4.

10 A. And that's -- that's not there on
11 Number 5.

12 Q. And during your accompany the
13 people, tour-people to the Empire State
14 Building, have you ever purchased a beer or
15 beverage that has the logo similar to
16 Applicant's Number 3?

17 A. No, I've never seen that. All --
18 all -- all I've seen is that you can
19 purchase these type of model.

20 Q. Outside the Empire State Building
21 during your business to take the people to
22 tour New York City, have you ever seen any
23 beer products or beverage products, they
24 have the logo resembles the logo in
25 Applicant's Number 3?

1 X. YANG

2 A. I should say that there's nothing
3 -- nothing that's identical to this
4 (indicating).

5 THE INTERPRETER: The witness is
6 pointing at Exhibit 3.

7 Q. What do you mean nothing that's
8 identical?

9 A. I -- I -- I should -- I should say
10 that -- I should say that there are
11 different -- a whole variety of different
12 packagings of -- that contain images of
13 different buildings. There are just
14 varieties of images of buildings but nothing
15 identical to this particular one.

16 (Whereupon, an off-the-record
17 discussion was held.)

18 Q. Have you ever taken any
19 tour-people go to a tour-trip outside New
20 York City?

21 A. Yes.

22 Q. During your tour-trip, have you
23 ever seen any beer products, beverage
24 products that they have the logo, a
25 trademark resemble the similar logo in

1 X. YANG

2 Applicant's Number 3?

3 A. You mean this one? No. You mean
4 identical ones, no.

5 Q. Let me show you, back to
6 Applicant's Number 5. During the time when
7 you accompanied the tour-people to go to
8 Empire State Building, have you ever seen
9 any beer products or beverage products, they
10 have the logo the same or resemble similarly
11 to the logos in Applicant's Number 5?

12 A. I -- I -- I cannot be -- no, I
13 cannot be sure but there should not be any.
14 If you're talking about beverage? No.

15 Q. How about beer?

16 A. No, never.

17 Q. Have you ever seen any products of
18 beer or beverage in New York City, they have
19 the trademark logos resemble same as the
20 Applicant's Number 5 logo?

21 A. As -- as far as beers and
22 beverages, I've never seen any. It's other
23 people's logos.

24 Q. How about outside the State of New
25 York, in other states?

1 X. YANG

2 A. Never seen any.

3 Q. In Applicant's Number 2, Mr. Liang
4 is saying that -- the -- image of the -- the
5 logo in Mr. Michael Liang's trademark very
6 similar -- that's the same as -- very
7 similar to Applicant's Number 4. He said
8 that this logo went inside his trademark --
9 consists of a building resembling the Empire
10 State Building.

11 MR. SHIMANOFF: Is there a
12 question yet?

13 MR. YAN: Let me continue.

14 Q. If someone -- someone tell you if
15 this logo resemble the Empire State --
16 Empire State Building, do you believe this
17 logo has any similarity or the same --
18 strike that. Let me rephrase. Do you
19 believe this -- this logo has any similarity
20 to Empire State Building?

21 MR. SHIMANOFF: Objection.

22 Calls for improper opinion
23 testimony; calls for a hypothetical;
24 speculative; lack of foundation.

25 A. First of all, this one --

1 X. YANG

2 (indicating) -- and that one and that one is
3 not the same thing. However, it's --
4 speculatively, if you want me to imagine,
5 they look similar.

6 Q. If that's the --

7 MR. SHIMANOFF: Sorry. Just for
8 the record, what was the witness
9 pointing to?

10 THE INTERPRETER: The witness is
11 pointing to Exhibit 5 and --

12 MR. YAN: No.

13 MR. SHIMANOFF: Exhibit 5?

14 THE INTERPRETER: Exhibit 5 and --
15 what's this one? Exhibit --

16 MR. YAN: Four.

17 THE INTERPRETER: -- 4.

18 MR. SHIMANOFF: That's not Exhibit
19 4. It's Exhibit 3.

20 THE INTERPRETER: Three.

21 A. For -- what I'm trying to say is
22 that these three image doesn't look like the
23 -- the -- the -- the same thing. However,
24 for example, this one -- (indicating) --

25 THE INTERPRETER: Witness pointing

1 X. YANG

2 at Exhibit 4.

3 A. -- if you try -- want to exercise
4 your imagination then they -- they look
5 alike. For example, these two --

6 THE INTERPRETER: Pointing at
7 Exhibit 5 and 3.

8 A. -- they -- they look similar.
9 However, this one -- (indicating) --

10 THE INTERPRETER: Pointing at
11 Exhibit 4.

12 A. -- it -- it look a bit different.

13 MR. YAN: Let's mark this as
14 Applicant's 6.

15 (Whereupon, the aforementioned
16 photocopy of a paper bag from Eataly
17 was marked as Applicant's Exhibit 6 for
18 identification as of this date by the
19 Reporter.)

20 Q. (Perusing document.)

21 So, let me show you Applicant's
22 Number 6. Are you familiar with this copy?

23 A. (Perusing document.)

24 I've seen it before.

25 Q. Where did you make this copy?

1 X. YANG

2 THE INTERPRETER: (Starts
3 translating.)

4 MR. SHIMANOFF: Hold on.

5 There's no evidence that he made
6 any copy. Do you to want establish a
7 foundation first, please?

8 Q. What's this copy?

9 A. It -- it was just a few days ago
10 while I was at 23rd Street or 24th Street,
11 Fifth Avenue, while I was accompanying my
12 clients, and we were eating something. We
13 were -- we were eating some food at a
14 restaurant. And all of a sudden, I see this
15 paper bag. And they were about to dispose
16 it. And I just saw that it contained this
17 image.

18 Q. When you have this paper bag, what
19 did you do with this paper bag?

20 A. This -- this paper bag is free to
21 contain food or other items. And -- and
22 just that because Michael was -- was already
23 making appointment with me too -- Michael
24 Liang was making appointment with me to come
25 here. And then I saw -- I saw this paper

1 X. YANG

2 bag contained this image. And -- and they
3 were about to dispose with -- it wasn't
4 broken already. It didn't -- I saw it, it
5 contained this image. So, I brought it --
6 brought it here.

7 Q. Did you make copy of this paper
8 bag into this piece of paper?

9 A. Yes.

10 Q. Now, if you compare this original
11 with this copy, is this copy a true and
12 accurate and complete copy of this paper
13 bag, on the one side?

14 A. It's the same because that's -- I
15 -- I made a copy myself.

16 Q. And so, when -- now, let's -- on
17 this copy, this Applicant's Number 6,
18 there's a logo. What's this logo?

19 MR. SHIMANOFF: Object to the
20 extent mischaracterizes a logo.

21 MR. YAN: Okay. Let me rephrase
22 my question.

23 Q. In this copy, the piece of copy,
24 have you seen any image in this copy?

25 A. On -- on all these images, that --

1 X. YANG

2 that's -- that's the image. And this is
3 also an image (indicating).

4 THE INTERPRETER: Pointing left
5 and right.

6 Q. What's this image about?

7 A. I -- I -- well, when I observed
8 this item, on the -- on the other side --
9 because I've been to Chicago as well. So, I
10 notice that, wasn't that the building in
11 Chicago; and on the other side, wasn't this
12 the building of New York.

13 And so, I even asked them, the --
14 I asked those cashiers, are -- the -- the
15 people inside, I said -- I said -- wasn't --
16 wasn't this Empire State Building. And they
17 said yes.

18 Q. And did you go to that restaurant
19 because the -- the -- there's a logo of
20 Empire State Building in the food bag?

21 MR. SHIMANOFF: Objection.

22 It's vague and ambiguous.

23 A. No. No.

24 Q. And did you like that food because
25 they used the Empire State Building

1 X. YANG

2 trademark?

3 MR. SHIMANOFF: Same objection;
4 also, lack of foundation.

5 A. The -- the -- the image has
6 nothing to do with the food. That -- this
7 is just a image of -- this is just a image.
8 Those are food.

9 Q. Do you -- do you feel that -- did
10 you feel that the food is different from
11 other food because the Empire State Building
12 trademark?

13 MR. SHIMANOFF: Just objection for
14 the record. Just calls for
15 speculation; improper opinion; lack of
16 foundation.

17 A. First of all, food has nothing to
18 do with -- with this bag. It -- it was just
19 that after we finished our food, there were
20 some remaining food so that we asked them
21 for a bag to take our -- take -- take away
22 our remaining food.

23 Q. Afterwards, after you ate there
24 and you received a food bag with the Empire
25 State Building image, would that image used

1 X. YANG

2 by the restaurant makes more likely than not
3 to go back to -- to eat there?

4 MR. SHIMANOFF: Same objection.

5 A. Not really. We just happen to
6 pass by there.

7 Q. Would the -- the Empire State
8 Building trademark used by this restaurant
9 makes you more convinced to -- to eat in
10 this restaurant?

11 MR. SHIMANOFF: Same objection,
12 plus vague and ambiguous.

13 A. That -- that's not necessary. It
14 was just that we happen to pass by, and then
15 ate there. And they had some left over.
16 And then the -- the waiter or -- gave --
17 gave us this bag to take away our remaining
18 food. It has nothing to do with us to
19 return back or not. And plus that a -- it
20 was my client that selected this place not
21 me. I was just accompanying them.

22 Q. Even that's your -- your custom or
23 plan went there -- but after you saw the
24 Empire State Building logo, would you make
25 -- would -- would that logo make you -- you

1 X. YANG

2 -- you more likely to eat in that
3 restaurant?

4 MR. SHIMANOFF: Same objection.

5 A. That restaurant -- that -- that
6 restaurant is -- it depends on that
7 restaurant's food. That has nothing to do
8 with this paper bag.

9 Q. Now, let's go back, Applicant's
10 Number 2, that Applicant trademark. Even
11 Mr. Michael Liang saying that that's the --
12 his trademark inside the logo resembles the
13 Empire State Building, what -- would that
14 logo because the Empire State Building will
15 make you to drink his beer?

16 MR. SHIMANOFF: Same objection.

17 A. Well, I -- I -- I think that it --
18 beer, it really depend on its quality and
19 its taste. It has nothing to do with the --
20 the -- the -- the -- it -- its logo.

21 For -- for example, these two look
22 really alike (indicating).

23 THE INTERPRETER: Pointing to
24 Exhibit 3 and Exhibit 6.

25 A. For example, this -- this one is

1 X. YANG

2 -- is a tourist site (indicating).

3 THE INTERPRETER: Pointing at
4 Exhibit 3.

5 A. And this -- and this one --
6 (indicating) --

7 THE INTERPRETER: Exhibit 6.

8 A. -- it -- it has to do with food.
9 So, these two are -- has nothing to do with
10 each other.

11 My -- my feeling is that the --
12 this image -- (indicating) --

13 THE INTERPRETER: Pointing at
14 Exhibit 6.

15 A. -- it -- it just happened to use
16 the image because -- because that restaurant
17 is located in New York City.

18 For example, on the -- on the
19 opposite side, that's Chicago (indicating).

20 THE INTERPRETER: Pointing at the
21 original paper bag.

22 A. That means that in Chicago,
23 there's also a restaurant. This restaurant
24 is also located in -- at the location in
25 Chicago.

1 X. YANG

2 Q. Would the Number 2 -- the Empire
3 State -- if that's the Number 2, the -- the
4 logo resemble Empire State Building --
5 Building, would Empire State Building makes
6 you more likely to drink the -- the -- the
7 beer?

8 MR. SHIMANOFF: Same objection,
9 plus hypothetical.

10 A. As far as I -- what -- what I
11 think, I won't. Well, it has to do whether
12 or not the beer tastes good or not.

13 Q. Because the -- the -- this logo --
14 strike.

15 Would the -- the -- the Empire
16 State Building logo have -- have anything to
17 do with the -- the beer?

18 MR. SHIMANOFF: Same objection,
19 plus vague and ambiguous.

20 A. Well, this is just a image. Those
21 are drinks. How could they be the same? Of
22 course not.

23 Q. To the best of information
24 knowledge, have you ever seen or purchased
25 any the products of beer beverage, the beer

1 X. YANG

2 with the -- beer with the Empire State

3 Building logo?

4 A. No. The only one -- the only one
5 I have -- I've seen is that -- that
6 restaurant.

7 Q. What does the -- the Empire State
8 Building logo in this trademark mean
9 anything to you?

10 MR. SHIMANOFF: Same objection.

11 A. Well, as far as -- as -- as far as
12 -- as far as my observation goes, this
13 probably just has something to do with New
14 York City because New York City has so many
15 historical buildings, and plus that that
16 image contain NYC on it. So, it has
17 something to do with New York City.

18 So as far as -- as far as my
19 observation goes, it -- it's that -- that
20 NYC is the acronym for New York City. And
21 then our AABDC also has still something to
22 do with New York City. And -- and that's as
23 far as it goes.

24 Q. Is Empire State Building famous?

25 A. Of course. It's a tourist site.

1 X. YANG

2 Q. But is the Empire State Building
3 famous in the beer product?

4 MR. SHIMANOFF: Objection. Same
5 objection, and lack of personal
6 knowledge.

7 A. Who -- who -- who said that? No.

8 Q. Is Empire State Building logo
9 famous in the beverage product?

10 MR. SHIMANOFF: Same objection.

11 Q. Based on your personal knowledge.

12 MR. SHIMANOFF: Same objection.

13 A. Well -- well, as far as I -- I --
14 my understanding goes, Empire State Building
15 is just a famous tourist site, just as the
16 -- famous as World Trade Center, or Statue
17 of Liberty. They had nothing to do with --
18 with beverage products.

19 MR. YAN: I finish my direct.

20 MR. SHIMANOFF: Okay. Can we take
21 a short break for the restroom and then
22 I'll --

23 MR. YAN: Yes, sure.

24 MR. SHIMANOFF: -- I'll have a few
25 follow-ups.

1 X. YANG

2 MR. YAN: Okay.

3 (Whereupon, a short recess was
4 taken.)

5 EXAMINATION BY

6 MR. SHIMANOFF:

7 Q. Good morning, Mr. Yang. My name
8 is Eric Shimanoff. I am counsel for the
9 Opposer in this matter, the Empire State
10 Building.

11 Mr. Yang, do you have any formal
12 education in architecture?

13 THE WITNESS: (in English) No.

14 A. No.

15 Q. In English.

16 A. No.

17 Q. Mr. Yang, do you have any formal
18 education in marketing?

19 A. I've -- I've been a salesperson
20 and -- I've been a salesperson. And I've
21 been engaging in many jobs that has to do
22 with marketing.

23 Q. But you don't have a degree in
24 marketing from any university, do you?

25 A. I don't.

1 X. YANG

2 Q. In preparation for your testimony
3 today, have you conducted any consumer
4 surveys?

5 A. What does that mean? I don't
6 understand.

7 Q. Do you understand what a consumer
8 survey is?

9 A. What -- what -- what type of
10 consumer in what -- what -- what field?

11 Q. My question is, today, in
12 preparation for your testimony, did you
13 conduct any consumer surveys?

14 A. Consumer in which field? For
15 example, consumer engaged -- consumer for
16 beverages? Consumer for -- for food?
17 Consumer for shopping? Which -- which part
18 -- which field are you talking about?

19 Q. My question is any field, any
20 consumer survey in preparation for your
21 testimony today.

22 A. You mean where? In China or in
23 the United States?

24 Q. The question is any, at all and I
25 am assuming your answer is no. Is that

1 X. YANG

2 correct?

3 A. Consumer survey, I've done it in
4 -- in China because I just came to China
5 from -- I --

6 THE INTERPRETER: Correction.

7 A. -- I just came to United States
8 from China.

9 Q. What kind of survey did you do in
10 China that you're referring to?

11 A. Retail business.

12 Q. Let me focus. Have you ever
13 conducted any consumer surveys, focus
14 groups, or other market research concerning
15 applicants marked in Exhibit Number 2?

16 A. That, no.

17 Q. Okay. Have you ever conducted any
18 consumer surveys, focus groups, or other
19 market research concerning any logo or
20 design of the Empire State Building?

21 A. This time -- this time that I -- I
22 -- I came back, the only thing I come across
23 is this one (indicating).

24 THE INTERPRETER: Pointing at
25 Exhibit 6.

1 X. YANG

2 Q. Let me repeat my question. Have
3 you conducted any consumer surveys, consumer
4 focus groups, or other consumer market
5 research concerning the Empire State
6 Building's logos or design?

7 A. I -- I -- I just came back a few
8 days. So, no.

9 Q. Have you ever conducted any
10 consumer surveys, consumer focus groups, or
11 other market research concerning the beer or
12 alcoholic beverage industry in the United
13 States?

14 A. Recently, no.

15 Q. At any time?

16 A. I've -- I've done a few -- a few
17 years ago.

18 Q. What did you do, specifically?

19 A. It's mainly focused on wine and
20 red wines. I -- I -- I'll visit different
21 store to see what type of clients they have,
22 just conducted these kind of research. I --
23 I did not give out forms, survey forms. I
24 did not do that. It -- just conducted
25 research.

1 X. YANG

2 However, a few years ago when
3 Michael brought this up about engaging in
4 beer business that -- I've -- I've done this
5 kind of surveys in China regarding beer
6 business.

7 Q. Have you ever directly surveyed
8 consumers of beer or alcoholic beverages in
9 the United States?

10 A. You -- you -- you mean direct
11 question and answer?

12 Q. Yes, with consumers.

13 A. Well, because my English is not
14 good, so I cannot engage in
15 question-and-answer conversation with
16 consumer directly. It's just among Chinese
17 people, Chinese friends, that I will ask
18 around.

19 Q. So, the answer is no; is that
20 correct?

21 A. I just answered you.

22 Q. But you tried to qualify an
23 answer. I'm asking, is the answer with
24 respect to the United States no? I'm not
25 asking what you did in China.

1 X. YANG

2 A. Have I -- have I -- have I done
3 what?

4 Q. Have you conducted any consumer
5 surveys, meaning directly questioned
6 consumers concerning the beer or alcoholic
7 beverage industry in the United States?

8 A. The -- the consumer survey, that
9 -- that only happened among Chinese people
10 and friends. And -- and I -- well, I did
11 not do that in the market.

12 Q. Nor have you conducted any
13 consumer focus groups or other direct
14 consumer research concerning the beer or
15 alcoholic beverage industry in the United
16 States; is that correct?

17 A. Consumer group? What do you mean?
18 For example, among a group of Chinese, would
19 that count as consumer group that -- I -- I
20 asked them about this related topic?

21 Q. Well, I don't see a limitation in
22 the application here to Chinese consumers.
23 So, we're talking about all consumers.

24 A. All -- all groups? Because people
25 -- human capability are limited, so -- so,

1 X. YANG

2 of course, I cannot cover all of them.

3 Q. Describe in detail any consumer
4 research, or consumer focus groups, or
5 consumer surveys you have conducted
6 concerning beer or alcoholic beverages?

7 A. For example, that -- among a group
8 of people, everybody is drinking a wine, a
9 red wine, so it would -- discuss about the
10 -- the production sites, the -- the
11 qualities, tastes, the quality of the
12 grapes, and production sites.

13 Regarding beer industries -- and
14 it's a long time ago that Michael Liang had
15 discussed this with me in the United States,
16 that because we -- he want to engage in beer
17 business, and -- yes, regarding beer
18 business that -- in -- in New York, there's
19 a -- a -- a -- a place in Harlem that they
20 had give us some production samples, and --
21 that because we want engage in the beer
22 business, we want to open up a -- a -- a
23 beer production line that bears some New
24 York culture.

25 Very early on, I -- I've -- I've

1 X. YANG

2 -- I've observed many beer products that
3 have variety of packaging that bear a
4 variety of cultures. And so, we're
5 considering thinking about engaging this
6 beer business.

7 And so -- so, just a few years ago
8 that -- this -- this is similar to a market
9 research that -- I've discussed this with --
10 among -- among other Chinese friends that
11 we'll talk about -- if we engage in this
12 business, how -- how it -- how it would fan
13 out.

14 And also, in China, that -- I've
15 -- I've also discussed this with people
16 who's operating supermarket business and
17 retailers. And we talk about this beer
18 business. I enlisted many opinions and
19 suggestions.

20 Q. You have not conducted any formal
21 surveys or focus groups of potential
22 purchasers of beer and alcoholic beverage
23 concerning beer and alcoholic beverage; is
24 that correct? In the United States.

25 A. First of all, I need to make it

1 X. YANG

2 clear that for sales and marketings, I --
3 I'm not a professional -- professional in
4 any specific field because that has to do
5 with market planning.

6 Q. I am asking about consumers who
7 are going to drink beer and alcoholic
8 beverages. Have you conducted any surveys
9 or focus groups of those people in the
10 United States?

11 A. I -- I said it -- I said it
12 already. I -- I only discussed -- I only
13 discussed this with the Chinese people
14 because my English is not -- not well. I
15 cannot speak English with English-speaking
16 people.

17 Q. You've been to the gift shop in
18 the Empire State Building, correct?

19 A. I did.

20 Q. How many times, approximately?

21 A. I've been there many times but
22 most of the times, I was just passing by
23 because I was just accompanying the -- my
24 clients.

25 Q. Have you seen drinking glasses

1 X. YANG

2 sold in the gift shop at the Empire State
3 Building?

4 A. That possibly, I did not. But the
5 -- the -- the one that I saw the most --
6 that are those -- that -- that -- the
7 building model. Because my -- my clients
8 are all fond of buying those items. So, we
9 -- we just go buy those items and leave.

10 Q. But you've been in the shop and
11 you've seen other types of merchandise in
12 the shop; isn't that correct?

13 A. I -- I -- I -- I will see them
14 but, however, I did not pay attention to
15 them because -- because every time, our time
16 schedule is tight. So, I was -- I was
17 really just accompanying the clients, and
18 not that I want to shop around myself, just
19 -- I was accompanying them after they bought
20 what they wanted, and then we leave.

21 Q. So, is it your testimony that
22 although you've been to the Empire State
23 Building gift shop numerous times, you
24 cannot identify one other type of
25 merchandise sold there other than a model of

1 X. YANG

2 the Empire State Building?

3 A. There is so many items there but
4 -- but I -- I only focus on accompanying the
5 clients. I'm not shopping myself. And --
6 and -- and the time is so tight. And -- and
7 sometime, the car was waiting outside, so we
8 need to hurry up. Because, for the most
9 part, the -- the clients are just buying the
10 -- the -- the building models. And so,
11 that's what I remember. And -- and it's
12 just like going to any type of shop. There
13 are so many items in it but I cannot
14 remember.

15 Q. So, when you enter the gift shop,
16 do you make it a point to direct your
17 clients, who I believe you said were mostly
18 from China, to models of the Empire State
19 Building for purchase?

20 A. Well, because every time we visit
21 Empire State Building, we'll -- we'll
22 definitely pass by the gift shop. And the
23 -- they will ask me, are there any
24 souvenirs. And when we came down from --
25 from upstairs, we definitely pass by the

1 X. YANG

2 gift shop. And then they'll go into -- go
3 inside to get their souvenirs. And I would
4 just wait for them outside because I -- I
5 was tired as well.

6 Q. You've testified today that you
7 have seen your clients purchase models of
8 the Empire State Building, and that's the
9 only merchandise you can recall being sold
10 in the gift shop; is that correct?

11 A. Right. As far as my recollection
12 goes, this is the only thing they -- they
13 bought. And sometime, they -- they think
14 it's too expensive inside, so they will go
15 out and buy it on the street, somewhere
16 else.

17 Q. You're familiar with the lobby of
18 the Empire State Building from the Fifth
19 Avenue entrance; is that correct?

20 A. Yes.

21 Q. Do your clients take photographs
22 of the lobby of the Empire State Building on
23 Fifth Avenue?

24 A. They -- they should. However, I'm
25 -- I'm not sure because sometime I would

1 X. YANG

2 just -- when I -- when I bring them there, I
3 would just wait outside. And -- and other
4 times, if -- if they also buy the ticket
5 from me, then I will accompany them
6 upstairs.

7 Q. You don't need a ticket to enter
8 the lobby; is that correct?

9 A. Right.

10 Q. You've been in the lobby many
11 times; is that correct?

12 A. Previously. However, recently for
13 over a year, I haven't been there anymore.

14 Q. Are you familiar with a mural of
15 the Empire State Building in the lobby of
16 the Empire State Building?

17 A. Which position was it?

18 Q. Just behind the visitor desk.

19 A. Directly facing the front
20 entrance?

21 Q. Yes.

22 A. Yes, I'm aware.

23 Q. Okay. That is a mural of the
24 design of the Empire State Building,
25 correct?

1 X. YANG

2 A. Possibly, but I've -- I haven't
3 been there for over a year so I cannot be
4 exact. Every time, I just went there and I
5 -- I saw it but I did not pay close
6 attention to it.

7 Q. Have you ever directed any of your
8 clients that they may want to take a
9 photograph of the mural facing the entrance
10 on the Fifth Avenue side of the Empire State
11 Building?

12 A. I did not personally direct them
13 to take picture. However, if my -- my
14 client want me to take picture for them, so
15 -- of course, I did. So -- so -- so, I
16 should have taken picture for them in front
17 of the mural.

18 Q. In front of the mirror or mural?
19 (Whereupon, a portion of the
20 testimony was read back.)

21 THE INTERPRETER: In front of the
22 mural.

23 MR. SHIMANOFF: Thank you.

24 Q. (Perusing document.)

25 Mr. Yang, I am going to put back

1 X. YANG

2 in front of you what was marked earlier as
3 Applicant's Exhibit Number 6. The building
4 on the right side of the exhibit, when you
5 first saw this on the original paper bag,
6 did you immediately recognize that building
7 as the Empire State Building?

8 A. (Perusing document.)

9 I -- I should have but because
10 that -- as -- a -- a -- say the base and the
11 top -- and there's New York written right
12 next to it so, of course, I -- I'll - I
13 would bring my -- bring my impression of the
14 -- the Empire State Building with the
15 cityscape in the back. And that would be
16 the same for the Chicago site and -- and bag
17 as well.

18 And I -- I even ask that cashier
19 in there and -- I ask them, is that Empire
20 State Building, and he said yes.

21 Q. Prior to your testimony today, did
22 you discuss the subject of your testimony
23 with Mr. Yan?

24 A. He told me that I need to come
25 here for a deposition. Then I -- I -- I --

1 X. YANG

2 I -- I made a copy of this to -- and submit
3 it to him. Also, that -- also, that days
4 before, I was still in China. And so, yes
5 -- Mr. Yan had contact me saying that, can I
6 come back -- when -- when I come back -- can
7 I come back earlier to -- to be deposed.
8 That's -- that's how I came to be aware of
9 this.

10 Q. Did Mr. Yan tell you the types of
11 questions he was going to be asking you
12 today?

13 A. That -- that, I -- I don't really
14 remember because we -- we just made
15 appointment to gather all together here
16 today. And I -- I just told him that I'll
17 just say anything that's the -- the truth.
18 I'll say the -- the -- the -- the truth.

19 Q. But did he tell you the subject of
20 your testimony here today, what it would be
21 about?

22 A. He -- he just -- he just told me
23 that this -- today's matter's regarding this
24 trademark. And he told me that I'm just
25 going to -- I'm just going to ask you a

1 X. YANG

2 series of questions and just -- most -- for
3 the most part, just me answer yes or no.

4 And -- and -- and -- and I also
5 asked him, can I ask something back. And he
6 said no, you cannot. And he also told me
7 that the -- the -- the lawyer from the
8 opposite party will also ask you a -- lines
9 of questions. And you just need to answer
10 them.

11 Q. Did he show you any of the
12 exhibits that have been marked today, 1
13 through 5?

14 A. While we -- while we were on our
15 way here, that -- he had shown me this
16 but -- but I'm -- I'm aware of this --
17 (indicating) --

18 THE INTERPRETER: Pointing at
19 Exhibit 3.

20 A. -- because I'm very familiar with
21 this -- (indicating) --

22 THE INTERPRETER: Pointing at
23 Exhibit 3.

24 A. -- because when we may have
25 purchased that, I've seen this item quite a

1 X. YANG

2 lot.

3 Q. Just so I'm clear, Mr. Yan showed
4 you Exhibits 2, 3, 4, and 5 prior to your
5 deposition today?

6 A. While -- while we were on our way
7 today, he had taken out these -- these
8 documents. And he said that in a while, we
9 -- I will be asking you questions about --
10 about these images. And -- and -- and I
11 said sure.

12 Q. Did he tell you what specific
13 questions he would be asking?

14 A. No. No. He did not and --
15 because this -- this is -- this one --
16 (indicating) --

17 THE INTERPRETER: Showing Exhibit
18 6.

19 A. -- this one is the one that I
20 submitted to him. So, he need to put them
21 all together. That's what I saw at the
22 restaurant. And he said he would ask me a
23 -- a question about that.

24 So, just I -- I gave him this --
25 this -- I gave him this document --

1 X. YANG

2 (indicating) --

3 THE INTERPRETER: Pointing at
4 Exhibit 6.

5 A. -- and -- and -- and I just
6 observed that these -- these images are --
7 look alike. And so, he said that he would
8 ask me a -- lines of questions regarding
9 these images. And he -- just answered me
10 truthfully.

11 And -- and also, I ask him during
12 a telephone conversation the other day -- I
13 asked him, are you going to answer me in --
14 ask -- asking me in English or Chinese
15 because my English is no good. And he -- he
16 said we -- we will have an interpreter.
17 Don't worry about it.

18 And I also tell him that if -- if
19 you translate for me, I'll disagree because
20 we need to find a independent interpreter to
21 accurately translate everything.

22 Q. Prior to your testimony today, did
23 you speak with Michael Liang about the
24 subject of your testimony?

25 A. Of course, because he asked me to

1 X. YANG

2 come here. So, of course, we had discussed
3 it.

4 Q. Did you discuss any specific
5 topics or types of questions you might be
6 asked today?

7 A. We -- we just discussed about
8 these images because this is the one I
9 brought -- (indicating) --

10 THE INTERPRETER: Pointing at --
11 witness pointing at Exhibit 6.

12 A. -- because I -- I -- I know -- I
13 -- I know a little bit about trademark
14 registration because trademark registration
15 is categorized, and that food and tourisms
16 are -- are different types. Because my
17 understanding is -- is that trademark
18 registration is categorized so that, for
19 example, even though it's the same -- same
20 image but it's applied to fashion, or food,
21 or architecture, or other -- other trade --
22 if it's a different trade and if -- if
23 there's a -- still using a -- a -- a similar
24 or same images, then it -- it should be
25 fine.

1 X. YANG

2 Q. Did you go to law school, Mr.
3 Yang?

4 A. I -- I haven't.

5 Q. You're not an expert in trademark
6 law -- are you? -- in the United States?

7 A. What -- what do you mean, not a
8 expert?

9 Q. Do you claim to be an expert in
10 trademark law, in the United States
11 trademark law?

12 A. I -- I know something somewhat.
13 What -- what I know is that trademark
14 registration is categorized.

15 Q. Where does this knowledge come
16 from?

17 A. Because when I was in China, I
18 have friends who have made trademark
19 registration. And then I -- I ask them.
20 And he told me that around the world
21 trademark registration is categorized.

22 Q. So, this comes from a friend; is
23 that correct?

24 A. This -- this friend is -- is
25 specialized in helping people for trademark

1 X. YANG

2 registration. He operates a company to do
3 that. And he also told me that he had
4 helped Chinese business people to make
5 trademark registration abroad. That's what
6 he told me.

7 Q. That's the sole basis of your
8 understanding of trademark law, from this
9 one person?

10 A. Right. It was from -- from this
11 person who specialize -- specialize in
12 trademark registration in China and also
13 abroad. That's what his -- his business is.

14 Q. (Perusing document.)

15 Mr. Yang, were you involved in any
16 manner in the design of the logo we see here
17 in Exhibit 2?

18 A. (Perusing document.)

19 No.

20 Q. Do you know who was involved in
21 the design of the logo here in Exhibit 2?

22 A. That -- that, I really don't know
23 because it was Michael Liang who's
24 responsible at the designing of this. It's
25 just that after he finished the design, he

1 X. YANG

2 -- he -- he had shown me.

3 Q. Have you ever shown the logo seen
4 here in Exhibit 2 to any potential consumer
5 of beer or alcoholic beverages?

6 A. No. No. I only saw it myself.

7 Q. So, all your testimony today about
8 the logo in Exhibit Number 2 comes from your
9 own opinion; is that correct?

10 A. Of course it's my own opinion. I
11 can only represent myself.

12 Q. I understand. I just want to
13 confirm that that's the case.

14 THE WITNESS: (in English) Okay.

15 MR. SHIMANOFF: Witness said okay.

16 THE INTERPRETER: The -- the
17 witness said okay in English.

18 MR. SHIMANOFF: I don't have any
19 additional questions. I do want to say
20 something for the record.

21 Do you have any additional direct?

22 MR. YAN: I don't have.

23 MR. SHIMANOFF: No?

24 MR. YAN: No.

25 MR. SHIMANOFF: Okay.

1 X. YANG

2 I do want to state for the record
3 that --

4 MR. YAN: Hold on. Hold on.

5 MR. SHIMANOFF: Do you have
6 questions?

7 MR. YAN: Yes.

8 CONTINUED EXAMINATION BY

9 MR. YAN:

10 Q. During your questions in the
11 cross-examination saying that when you saw
12 -- have you ever seen the drinking glasses
13 ever been sold in the gift shop of the
14 Empire State Building, you were questioned
15 about it, with regard to the drinking
16 glasses. My question is, even if the
17 drinking glasses bearing with the Empire
18 State Building image, logo or trademark, do
19 you believe drinking glasses the same as the
20 beer?

21 MR. SHIMANOFF: Same objections
22 like I made before. Foundation;
23 speculation; improper opinion
24 testimony; hypothetical.

25 MR. YAN: That's the --

1 X. YANG

2 MR. SHIMANOFF: I --

3 MR. YAN: -- that's the personal
4 opinion.

5 MR. SHIMANOFF: I'm putting it on
6 the record. That's all I'm doing.

7 A. I -- I -- I felt it's different
8 because the -- the -- the drinking glasses
9 is just a glass. Even -- even bearing the
10 image of Empire State Building, it -- it
11 could -- it could contain beer. It could
12 contain beverage. It could contain water.

13 Q. To your own opinion, knowledge,
14 some product like beer product with the
15 Empire State Building logo, would that --
16 the same as the drinking glasses bearing
17 with the Empire State Building image or
18 logo?

19 MR. SHIMANOFF: Same objection,
20 pluses vague and ambiguous.

21 A. Well, in my opinion, just as I
22 I've stated earlier about the principle of
23 categorizing trademarks, it -- it should be
24 different. So -- so, my opinion is that I
25 reckon that it's different because that --

1 X. YANG

2 that is the whole purpose of trademark, to
3 be categorized.

4 Q. Another question is, for drinking
5 glasses bearing with the Empire State
6 Building trademark, if there are two
7 drinking glasses with Empire State Building
8 trademark but with different kind of beer,
9 because that the Empire State Building
10 trademark makes you drink the -- the beer,
11 or because the taste of different beer let's
12 you make a selection of the beer?

13 MR. SHIMANOFF: Same objection,
14 plus argumentative.

15 A. Of -- of course, that it depends
16 on the quality of the beer. It has -- it
17 has no bearing on the -- the -- the -- the
18 Empire State Building image.

19 MR. YAN: I have no further
20 redirect.

21 MR. SHIMANOFF: Okay.

22 Also, I am just going to make a
23 relevancy objection to all this opinion
24 testimony but that's for the record.

25 Also, for the record, during

1 X. YANG

2 Opposer's testimony period, we had
3 asked Mr. Yan to waive the
4 certification, sealing, and filing
5 requirements under 37 CFR, Section
6 2.123F. He refused to. So, we are not
7 waiving those requirements either.

8 MR. YAN: That's the one that you
9 are --

10 Richard, you're going to attach
11 these exhibits --

12 MR. SHIMANOFF: There's a whole
13 process. David, you should read the
14 manual which clearly you haven't done.

15 (Whereupon, an off-the-record
16 discussion was held.)

17 I just wanted to get that we are
18 not waiving on the record. I have
19 nothing else for the record.

20 Do you, David?

21 (Continued on next page to include
22 jurat.)

23

24

25

1 X. YANG

2 MR. YAN: Yes. That's the record
3 of we ask the court reporter to seal
4 these and attach with your
5 certification.

6 (Whereupon, at 12:30 p.m., the
7 examination of this witness was
8 concluded.)

9

10 _____
XUEFENG YANG

11

12

13 Subscribed and sworn to before me
14 this _____ day of _____ 20__.

15

16 _____
NOTARY PUBLIC

17

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1 X. YANG

2 E X H I B I T S

3 APPLICANT EXHIBITS:

4	NUMBER	DESCRIPTION	PAGE
5	1	Applicant's Notice	4
6		of Taking Trial	
		Testimony (2 pages)	
7	2	Trademark	6
8		electronic search	
		(2 pages)	
9	3	Drawing (1 page)	13
10	4	Drawing (1 page)	14
11	5	Logo (1 page)	21
12	6	Photocopy of a	27
13		paper bag from	
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17 I N D E X

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1 X. YANG

2 C E R T I F I C A T E

3
4 STATE OF NEW YORK)
5 : SS.:
6 COUNTY OF KINGS)

7 I, RICHARD AURELIO, a Notary Public for
8 and within the State of New York, do hereby
9 certify:

10 That the witness whose examination is
11 hereinbefore set forth was duly sworn and
12 that such examination is a true record of
13 the testimony given by that witness.

14 I further certify that I am not related
15 to any of the parties to this action by
16 blood or by marriage and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 30th day of May 2015.

20
21
22 

23 RICHARD AURELIO
24
25

1	accompanying [6] 28/11 32/21 46/23 47/17 47/19 48/4 accurate [1] 29/12 accurately [1] 56/21 acknowledge [1] 4/17 acronym [1] 36/20 across [1] 40/22 action [1] 67/15 additional [2] 60/19 60/21 admitted [3] 15/16 16/6 21/10 aforementioned [6] 4/7 6/23 13/11 14/22 21/3 27/15 after [5] 31/19 31/23 32/23 47/19 59/25 Afterwards [1] 31/23 ago [7] 6/13 8/5 28/9 41/17 42/2 44/14 45/7 agreement [1] 5/7 ahead [1] 11/5 alcoholic [9] 41/12 42/8 43/6 43/15 44/6 45/22 45/23 46/7 60/5 alike [4] 22/3 27/5 33/22 56/7 all [24] 13/5 14/16 14/17 17/10 21/25 22/17 22/18 22/18 25/25 28/14 29/25 31/17 39/24 43/23 43/24 43/24 44/2 45/25 47/8 53/15 55/21 60/7 62/6 63/23 already [7] 5/9 15/15 16/5 21/9 28/22 29/4 46/12 also [28] 2/16 5/22 6/17 13/4 13/4 13/6 13/7 16/4 18/4 30/3 31/4 34/23 34/24 36/21 45/14 45/15 50/4 53/3 53/3 54/4 54/6 54/8 56/11 56/18 59/3 59/12 63/22 63/25 although [1] 47/22 am [8] 13/24 38/8 39/25 46/6 51/25 63/22 67/14 67/16 ambiguous [8] 12/19 13/25 17/7 19/22 30/22 32/12 35/19 62/20 American [3] 8/20 8/23 9/17 Americas [1] 2/5 among [6] 42/16 43/9 43/18 44/7 45/10 45/10 another [3] 18/2 18/3 63/4 answer [14] 5/13 5/16 5/17 5/19 5/25 39/25 42/11 42/15 42/19 42/23 42/23 54/3 54/9 56/13 answered [3] 21/24 42/21 56/9 answers [1] 3/4 any [55] 6/3 9/19 10/19 10/22 13/21 13/21 14/13 16/10 18/7 19/25 20/15 20/16 22/22 23/18 23/23 24/9 24/13 24/17 24/22	25/2 25/17 25/19 28/6 29/24 35/25 38/11 38/17 38/24 39/3 39/13 39/19 39/19 39/24 40/13 40/17 40/19 41/3 41/9 41/15 43/4 43/12 44/3 45/20 46/4 46/8 48/12 48/23 51/7 54/11 57/4 59/15 60/4 60/18 60/21 67/15 anymore [1] 50/13 anything [9] 10/22 14/12 18/8 20/15 21/14 21/20 35/16 36/9 53/17 APPEAL [1] 1/3 applicant [6] 1/12 2/10 3/22 7/11 33/10 66/3 applicant's [44] 4/6 4/8 4/10 4/15 4/23 6/25 7/5 13/10 13/13 13/18 14/12 14/13 14/21 14/24 15/8 15/15 15/21 15/25 18/8 20/13 20/25 21/4 21/8 21/13 21/14 21/15 21/19 21/20 21/21 22/16 22/25 24/2 24/6 24/11 24/20 25/3 25/7 27/14 27/17 27/21 29/17 33/9 52/3 66/5 applicants [1] 40/15 application [4] 1/5 3/23 4/4 43/22 applied [1] 57/20 appointment [3] 28/23 28/24 53/15 approximately [1] 46/20 architecture [3] 16/14 38/12 57/21 are [31] 4/2 6/4 6/14 7/7 16/14 17/25 23/10 23/13 27/22 30/14 31/8 34/9 35/21 39/18 43/25 46/7 47/6 47/8 48/9 48/13 48/23 50/14 56/6 56/13 57/16 57/16 58/6 63/6 64/6 64/9 64/17 argumentative [2] 19/20 63/14 around [3] 42/18 47/18 58/20 arrangement [2] 11/14 11/15 arrived [1] 17/22 Art [1] 12/2 as [63] 3/6 3/9 4/5 4/9 4/11 6/21 6/25 7/2 8/11 13/9 13/12 13/14 13/18 13/24 14/20 14/23 14/25 15/17 20/9 20/9 20/25 21/4 21/5 21/21 24/19 24/21 24/21 24/21 25/6 27/13 27/17 27/18 30/9 35/10 35/10 36/11 36/11 36/11 36/11 36/11 36/12 36/12 36/18 36/18 36/18 36/18 36/22 36/23 37/13 37/13 37/15 37/16 43/19 49/5 49/11 49/11 52/2 52/7 52/10 52/17 61/19 62/16 62/21 Asia [3] 8/22 8/22 8/23	Asian [2] 9/17 9/20 ask [14] 21/18 42/17 48/23 52/18 52/19 53/25 54/5 54/8 55/22 56/8 56/11 56/14 58/19 65/3 asked [10] 21/24 30/13 30/14 31/20 43/20 54/5 56/13 56/25 57/6 64/3 asking [8] 5/2 42/23 42/25 46/6 53/11 55/9 55/13 56/14 assist [1] 5/12 assuming [1] 39/25 ate [2] 31/23 32/15 attach [2] 64/10 65/4 attempt [1] 11/3 attention [3] 18/23 47/14 51/6 Attorneys [2] 2/5 2/10 Aurelio [3] 1/22 67/7 67/23 Avenue [9] 1/21 2/5 2/11 17/19 18/21 28/11 49/19 49/23 51/10 aware [4] 6/20 50/22 53/8 54/16 away [3] 19/8 31/21 32/17
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

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EMPIRE STATE BUILDING COMPANY L.L.C.,
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Opposer,
:

v.
:

MICHAEL LIANG,
:

Applicant.
:
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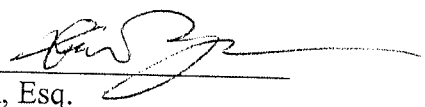
Opposition No.: 91204122

APPLICANT'S NOTICE OF TAKING TRIAL TESTIMONY

PLEASE TAKE NOTICE that pursuant to Trademark Rule 2.123, as part of their trial testimony, Applicant will take the oral testimony of Xuefeng Yang. The testimony will take place at the office of Diamond Midtown East located at 275 Madison Ave., 4th Floor, New York, NY 10016 on May 22, 2015, beginning at 10:00 a.m. You may attend and cross-examine.

Dated: Flushing, New York
May 15, 2015

Law Offices of David Yan
Attorney for Applicant

By: 
David Yan, Esq.

136-20 38th Avenue, Suite 11E
Flushing, New York 11354
Telephone: (718) 888-7788

Applicant
1
5/22/15 RA

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing *Applicant's Notice Of Taking Trial Testimony* has been served on the Opposer's Attorney of Record, Eric J. Shimanoff, COWAN, LIEBOWITZ & LATMAN, P.C., by mailing said copy on May 15, 2015, via First Class Mail, postage prepaid to: Eric J. Shimanoff, Esq., COWAN, LIEBOWITZ & LATMAN, P.C., 1133 Avenue of the Americas, New York, NY 10036.

Dated: Flushing, New York
May 15, 2015

Law Offices of David Yan
Attorney for Applicant

By: _____

David Yan, Esq.

136-20 38th Avenue, Suite 11E
Flushing, New York 11354
Telephone: (718) 888-7788



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Word Mark NYC BEER LAGER

Goods and Services IC 032. US 045 046 048. G & S: Alcohol-free beers; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; De-alcoholised beer; Extracts of hops for making beer; Flavored beers; Ginger beer; Hop extracts for manufacturing beer; Imitation beer; Malt beer; Malt extracts for making beer; Malt liquor; Non-alcoholic beer; Pale beer; Porter

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design 05.07.02 - Bundles, grain; Haystacks; Stalks (grain)

Search Code 05.15.02 - Laurel leaves or branches (borders or frames); Wreaths
 07.03.01 - Skyscrapers
 24.09.07 - Advertising, banners; Banners
 26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles
 26.01.21 - Circles that are totally or partially shaded.

Serial Number 85213453

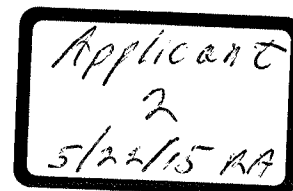
Filing Date January 8, 2011

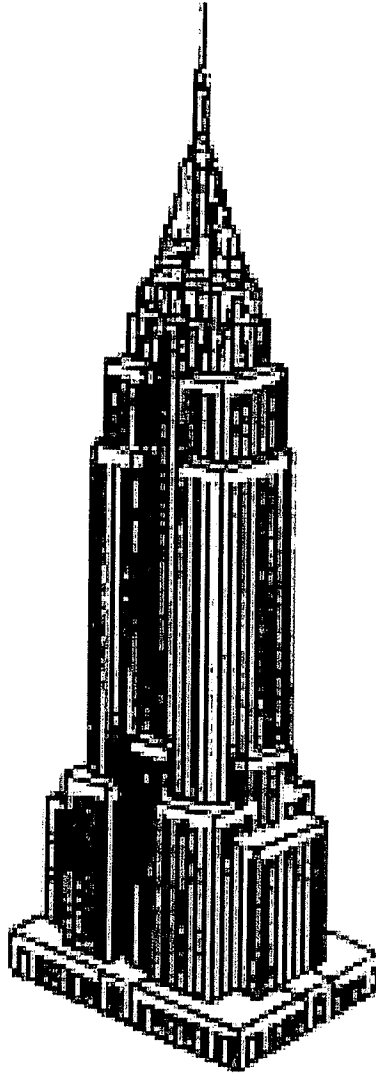
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Original Filing Basis 1B

Published for Opposition December 6, 2011

Owner

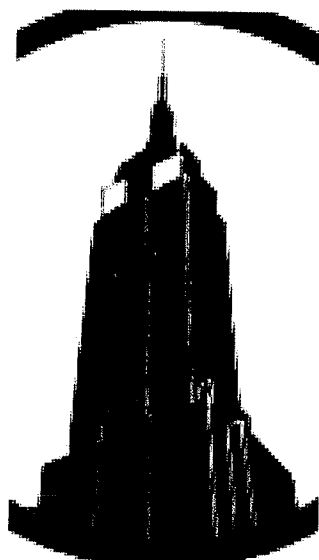




EXF

Applicant
3
5/22/15 RA

Applicant
4
5/22/15 RY



(APPLICANT) Liang, Michael INDIVIDUAL UNITED STATES 55-25 98th Place, Apt. 3C Corona
NEW YORK 11368

**Attorney of
Record**

David Yan, Esq.

Disclaimer

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NYC BEER" AND "LAGER" APART
FROM THE MARK AS SHOWN

**Description
of Mark**

Color is not claimed as a feature of the mark. The mark consists of a building resembling the Empire
State Building surrounded by three concentric circles. The middle circle is wide and contains the
wording "NYC BEER" in the interior. The circles are surrounded by a wreath with a wheat pattern. At
the bottom is a banner with the term "LAGER" inside.

Type of Mark TRADEMARK

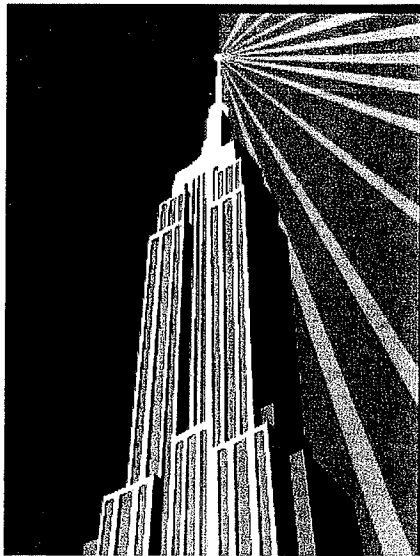
Register PRINCIPAL

**Live/Dead
Indicator** LIVE

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Applicant
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5/22/15 RA



Applicant
6
5/22/15 RR

PLEASE HOLD BOTH HANDLES



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NEW YORK, NY 10010



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IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed January 8, 2011
For Mark: NYC BEER LAGER and Design

Published in the Official Gazette:
December 6, 2011

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ESRT EMPIRE STATE BUILDING, L.L.C.,

Opposer,

v.

Opposition No.
91204122

MICHAEL LIANG,

Applicant.

-----X

DATE: May 22, 2015

TIME: 1:09 p.m.

TRIAL TESTIMONY of the Applicant,
MICHAEL LIANG, taken by the Respective
Parties, pursuant to Notice, held at the
Offices of Diamond Midtown East,
275 Madison Avenue, Suite 6B, New York,
New York 10016, before Richard Aurelio,
a Notary Public of the State of New York.

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A P P E A R A N C E S:

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BY: DAVID YAN, ESQ.
(718) 888-7788
davidyanlawfirm@yahoo.com

ALSO PRESENT:

BIN YUAN, MANDARIN INTERPRETER

* * *

1 M. LIANG

2 B I N Y U A N, was duly sworn to
3 interpret the questions from English into
4 Mandarin, and the answers from Mandarin into
5 English.

6 M I C H A E L L I A N G, called as a
7 witness, having been duly sworn by a Notary
8 Public, was examined and testified through
9 the interpreter as follows:

10 EXAMINATION BY

11 MR. YAN:

12 Q. Please state your name for the
13 record.

14 A. Michael Liang, M-I-C-H-A-E-L,
15 L-I-A-N-G.

16 Q. Where do you reside?

17 A. 5525 98th Place, Apartment 3C,
18 Corona, New York 11368.

19 MR. YAN: At the end of the
20 testimony, Applicant's counsel moves to
21 TTAB to admit the exhibits previously
22 marked as Applicant's 1 through 6 into
23 the evidence and seal these evidence
24 with the transcripts with proper
25 certification.

1 M. LIANG

2 MR. SHIMANOFF: We are reserving
3 our objections as stated on the
4 testimony. I don't have any objection
5 to these exhibits.

6 MR. YAN: You have all -- reserve
7 the transcript --

8 MR. SHIMANOFF: I --

9 MR. YAN: You don't waive the
10 regular transcript?

11 MR. SHIMANOFF: I don't waive. I
12 don't waive. You didn't, David. So,
13 I'm not waiving.

14 MR. YAN: The Opposer waives all
15 rights to review the transcript for
16 accuracy --

17 MR. SHIMANOFF: The witness has
18 the right to review the transcript.

19 MR. YAN: Witness also has a right
20 to review it, and also --

21 MR. SHIMANOFF: Everyone has a
22 right. No one's waiving anything.

23 MR. YAN: Also, witness, Mr. Yang,
24 reserve his rights to review the
25 accuracy of the transcripts.

1 M. LIANG

2 (Whereupon, an off-the-record
3 discussion was held.)

4 Q. Mr. Liang, let me give you some
5 instructions about the testimony today. We
6 have a Mandarin interpreter to help you for
7 your testimony.

8 A. Okay. I'm aware.

9 Q. Even if you understand some
10 English, please give your answer in Chinese
11 so that the interpreter can help you to
12 translate into English.

13 A. Okay.

14 Q. Also, because the court reporter
15 cannot record your body gesture, any of
16 these kind of hand, nods, something, please
17 verbalize your answer.

18 A. Okay.

19 Q. Have you taken any medications
20 that might prevent you from testifying
21 today?

22 A. No.

23 Q. Mr. Liang, what do you do now?

24 A. I'm currently engaging this EB-5
25 temporary corporation business which enlists

1 M. LIANG

2 Chinas entrepreneur to make investment in
3 United States.

4 Q. Are you employed?

5 A. Yes.

6 Q. Where do you work?

7 A. Lam, L-A-M, Group.

8 Q. When did you start in Lam Group?

9 A. That was in February 2004, around
10 there.

11 Q. Prior to February 2004, were you
12 employed?

13 A. Yes. Before that, I was working
14 at AABDC.

15 Q. What does AABDC stand for?

16 A. It's Asian American Business
17 Development Center.

18 Q. How long you work there?

19 A. I pretty much started working
20 there in 1998.

21 Q. Did you have a position in that
22 organization?

23 A. Right. Previously, I am the
24 Chinese market manager. And afterwards, I
25 was VP. And then finally, I was the -- the

1 M. LIANG

2 deputy director.

3 Q. (Perusing document.)

4 Mr. Liang, let me show you
5 Applicant Number 2, previously marked as
6 Applicant Number 2?

7 A. (Perusing document.)

8 Yes, I've seen it.

9 Q. Have you seen anything such as any
10 logos in that page?

11 A. Yes.

12 Q. What's that?

13 A. That was a -- a -- a beer logo
14 that we tried to apply for.

15 Q. Who tried to apply for that logo?

16 A. Our company.

17 Q. And what does this logo -- what
18 does -- what kind of meaning does this logo
19 have?

20 MR. SHIMANOFF: Objection. Vague;
21 speculative.

22 A. Can you repeat the question?

23 Q. What kind of meaning does this
24 logo have?

25 MR. SHIMANOFF: Same objection.

1 M. LIANG

2 A. We -- we try to register for a --
3 a -- a logo in order to produce beer.

4 Q. Who designed this logo?

5 A. Our company. We -- we design it
6 together.

7 Q. Who give idea to the designer to
8 put up this logo?

9 A. A -- a team from our company.

10 Q. Did you provide any -- your own
11 opinion and input to this design?

12 A. My own opinion? Yes.

13 Q. What was your opinion for the
14 input you give to the designer?

15 A. He -- he should make a design that
16 represent New Yorkers, a positive attitude,
17 aspirations for freedom. And -- and it
18 should represent New York, such a
19 cosmopolitan culture.

20 Q. Can you describe to us what is
21 this design?

22 A. There's NYC which stand for New
23 York City, which also stands for the -- for
24 New York as a center. And the building in
25 the center represents the -- a -- a

1 M. LIANG
2 metropolitan or cosmopolitan culture, a -- a
3 -- a positive-attitude culture. And -- and
4 -- the -- the -- the -- the -- the wheat
5 surrounding it represent success and -- and
6 union. And -- and -- and these -- these --
7 and the two on the bottom represent two
8 types of beer.

9 MR. SHIMANOFF: I just want to
10 reflect for the record that the witness
11 is, in a sense, correcting the
12 translation or encouraging the
13 translation at certain points.

14 THE INTERPRETER: The witness is
15 not correcting the interpreter. The
16 witness is repeating.

17 MR. SHIMANOFF: Repeating. Sorry.
18 Thank you. That's what I meant.

19 THE INTERPRETER: Thank you.

20 MR. SHIMANOFF: Repeating in
21 English; understanding.

22 Q. In your application for
23 registration of trademark, have you ever
24 referred to the building in the trademark as
25 any type of the building in New York City?

1 M. LIANG

2 A. No.

3 Q. Let me bring your attention,
4 there's a description of your trademark. It
5 says that this building resembles the Empire
6 State Building?

7 A. It's not that it -- it -- it
8 definitely has to resemble what -- Empire
9 State Building. We want a building that --
10 that resemble either Empire State Building,
11 or the World Trade Center, or the Eiffel
12 Tower.

13 Q. Why do you want a -- your -- the
14 logo building in your trademark, for
15 example, Eiffel Tower, World Trade Center,
16 or Empire State Building?

17 MR. SHIMANOFF: Can I get the
18 question read back? I'm sorry. I
19 didn't quite get it.

20 (Whereupon, a portion of the
21 testimony was read back.)

22 A. Because -- because it has a -- a
23 -- a -- a regional symbolic meaning, a
24 cultural meaning, a -- a -- a meaning of
25 nobility, a noble meaning.

1 M. LIANG

2 Q. When you put the building logo in
3 your trademark, did you intend to make that
4 logo the same as any type of the building
5 logo in New York City?

6 A. Not -- not -- not a particular
7 building. It could be a -- a -- a -- a
8 building anywhere in the world. It's a
9 symbolic building representing a -- a -- a
10 metropolis.

11 Q. (Perusing document.)

12 Mr. Liang, let me show Applicant's
13 Number 3, previously marked as Applicant's
14 Number 3. Are you familiar with this image
15 in Applicant's Number 3?

16 A. (Perusing document.)

17 It -- it's just a -- a generic
18 building.

19 Q. Is this Empire State Building?

20 A. Depend on which perspective you're
21 looking at it. If -- if you say it looks
22 like it, it could be. But if you said not
23 necessarily, then it's not.

24 MR. YAN: Let's mark this as
25 Applicant's Number 7.

1 M. LIANG

2 (Whereupon, the aforementioned
3 Notice of Opposition (6 pages) was
4 marked as Applicant's Exhibit 7 for
5 identification as of this date by the
6 Reporter.)

7 Q. (Perusing document.)

8 Mr. Liang, let me show you --
9 that's Applicant's Number 7. This -- this
10 is the Empire State Building Notice of
11 Opposition to your application for trademark
12 registration. On the page two, there's a
13 image Empire State Building that -- that's
14 -- that the design mark. Then you flip to
15 the next page, and the page three, that
16 image Empire State Building that -- that's
17 also there, design-mark. And if you go to
18 next two pages, then under that page was the
19 body of the -- there are three marks that
20 Empire State Building there saying that --
21 that trademarks. Do you see any similarity
22 or resemblance of Applicant's Number 3 with
23 the -- these marks I just gave you in
24 Applicant's Number 7?

25 MR. SHIMANOFF: I've got a few

1 M. LIANG

2 objections, and kind of a long setup.

3 I do want to object to the extent
4 this is not the operative pleading. I
5 also want to object to the extent it
6 mischaracterizes this Notice of
7 Opposition. It's argumentative.

8 The question that's been asked,
9 objections for improper opinion; lack
10 of personal knowledge; foundation,
11 speculative.

12 A. Okay. There's some differences.
13 I think there are a little bit of
14 difference.

15 Q. But with your -- let's bring back
16 to you -- that's -- that is Number 2 -- your
17 trademark, that's a logo inside your
18 trademark building. Does your building logo
19 have anything resembles of the -- the -- the
20 logos in -- in Exhibit Number 3 and Exhibit
21 Number 7?

22 MR. SHIMANOFF: Same objections.

23 A. Generally, they -- they -- they
24 resemble each other but I -- I reckon
25 there's still some differences.

1 M. LIANG

2 Q. (Perusing document.)

3 Let me show you Applicant's Number
4 4. During your trial deposition by Opposer,
5 you were questioned, this image. Is this
6 the same image as your building logo inside
7 your trademark?

8 A. (Perusing document.)

9 The last time I was informed, that
10 -- that this -- this was a copy of that.
11 However, if you ask me right now, I cannot
12 be exact to tell you that they are
13 identical.

14 Q. Not -- I ask you if you compare
15 the -- any of this logo images in Number 2
16 -- besides your logo of trademark, and also
17 the logos Number 3, is the logo in Number 4
18 any similar, or has any resemblance to any
19 logos in Number 3 and in Number 2?

20 MR. SHIMANOFF: Same objections.

21 A. I don't think so because it depend
22 on which perspective you look at it. But if
23 you just see the outline, they -- they look
24 similar. However, if you look at it from a
25 perspective -- different perspective, it

1 M. LIANG

2 looks different.

3 Q. How about the -- the logos in
4 Number 4? Is the logo in Number 4 as any --
5 is the logo in Number 4 similar to logo in
6 Number 3?

7 MR. SHIMANOFF: Same objections.

8 A. Just on the surface value, they
9 all look alike, buildings. But in reality,
10 they are different.

11 Q. And how about in Number -- the
12 logos in Number 4, similar to the logos on
13 Number 2 -- in Number 2?

14 MR. SHIMANOFF: Same objections.

15 A. On the -- on the surface value,
16 they look similar.

17 Q. Sir, I did not ask you the surface
18 value. I ask you when you see these, when
19 you first look at them, are they the same or
20 different?

21 MR. SHIMANOFF: Same objections.

22 A. Yes. Of course, once you see it,
23 they -- they all look alike.

24 Q. The same?

25 MR. SHIMANOFF: Same objections.

1 M. LIANG

2 A. No.

3 Q. Let me show you back to
4 Applicant's Number 5. You were also
5 questioned -- this one building -- you were
6 also questioned during your deposition by
7 Opposer before -- is Number 5 similar to
8 Number 4?

9 MR. SHIMANOFF: Same objections.

10 MR. YAN: I can rephrase it.

11 Q. Is the logo in Number 5, the image
12 in Number 5, similar to the logo, image in
13 Number 4?

14 MR. SHIMANOFF: Same objection.

15 A. On the surface value, they -- they
16 look similar but I -- I think they are
17 different.

18 Q. It's a different logo, right?

19 MR. SHIMANOFF: Argumentative, same
20 objection.

21 A. They are similar but -- but they
22 are not the same.

23 Q. Would -- would you be confused
24 about the -- these logos?

25 MR. SHIMANOFF: Same objection.

1 M. LIANG

2 Vague and ambiguous.

3 A. I -- I won't be confused but they
4 -- they just look a bit similar.

5 Q. Is it different?

6 MR. SHIMANOFF: Same objections.

7 A. Right.

8 Q. The logos image in Number 2,
9 Number 3, Number 5, all call Empire State
10 Building logos. Is your logo in -- what's
11 this -- let me strike.

12 If the -- the logos in Number 7,
13 Number 3, Number 5, all called Empire State
14 Building logos, is your -- the logos in
15 Number 2 and Number 4 also the same as the
16 Empire State Building logos?

17 MR. SHIMANOFF: Same objections.

18 A. It's not. It's not. It's just --
19 it's just how you think.

20 Q. When you registered trademark, you
21 refer your logo in your trademark resembles
22 Empire State Building. Did you intend to
23 have the consumer drink your beer because of
24 the Empire State Building?

25 THE WITNESS: (in English) No.

1 M. LIANG

2 Q. Please say in Chinese.

3 A. No. No.

4 Q. What was your intention you refer
5 your building logo as resembling the Empire
6 State Building?

7 A. It -- it -- it -- it symbolizes a
8 upward positive spirit. I -- I was -- I was
9 intend to sell the beers and beverages. I
10 am not trying to sell Empire State Building.
11 I -- I was trying to sell beverages. I'm
12 not trying to sell -- sell -- sell the
13 building.

14 Q. Would you be confused if your
15 product of beer with some sort of logo you
16 just described with another product of the
17 beer bearing with the Empire State Building
18 logo?

19 MR. SHIMANOFF: Same objections.

20 THE INTERPRETER: (Speaking
21 Chinese.)

22 MR. YAN: Yes, let me repeat.

23 Q. Would it be confused with the --
24 the -- the beer product -- product bearing
25 your logo with another beer product bearing

1 M. LIANG

2 with Empire State Building logo?

3 MR. SHIMANOFF: Same objection.

4 A. The -- the -- the -- my whole
5 intention of using this logo is try to sell
6 my beer. It has nothing to do with the
7 building.

8 Q. For -- for the same kind of beer
9 taste, would you be -- will you drink them
10 differently if that's the one beer in your
11 logo -- will you be -- will you -- will you
12 feel -- will you feel differently of kind of
13 the beer bearing your logo trademark from
14 another kind of -- from -- from the -- from
15 the beer bearing with the Empire State
16 Building trademark after the -- the -- the
17 beer taste the same to you?

18 MR. SHIMANOFF: Same objection.
19 Vague and ambiguous.

20 A. How can I be confused? They're
21 different.

22 Q. Let me just -- there was -- my
23 question was not clear.

24 Let me say this way. There are
25 two bottles. One is -- has the -- the --

1 M. LIANG

2 the -- bearing your trademark, another
3 bottle bearing Empire State Building
4 trademark but two bottles contain the same
5 kind of beer. Would you be confused by
6 these two bottles?

7 MR. SHIMANOFF: Same objection.

8 Q. The taste is --

9 A. You meant -- you meant the two
10 logos are -- are the same?

11 Q. Let me just repeat my question.

12 There are two containers contain
13 same kind of beer. But one container
14 bearing your trademark, other container
15 bearing the Empire State Building trademark
16 similar to Number 3, Number 5, or Number 7
17 trademarks in the exhibits, would you be
18 confused by these two bottles?

19 MR. SHIMANOFF: Same objection.

20 A. I will -- there's -- there's
21 nothing to be confused about. You -- you
22 meant, they -- they all taste the same? You
23 mean that -- that -- that they look
24 different from the outside?

25 Q. Same shape of -- same -- same kind

1 M. LIANG

2 of bottle. One is with your mark, one is
3 with Empire State Building trademark. But
4 will you confused -- will you be confused by
5 the taste of the beer?

6 MR. SHIMANOFF: Same objection.

7 A. You mean confused? I -- I won't
8 be confused because I -- I -- I can clearly
9 recognize which one is mine.

10 Q. Would the Empire State Building
11 trademark change your feeling to the taste
12 of the beer?

13 MR. SHIMANOFF: Same objection.

14 A. It won't. I mean the -- the --
15 the beer, the -- just the -- are -- beers
16 are just beer.

17 Q. When you designed your mark and
18 also describe the -- the logo in the mark
19 resembling some of the Empire State
20 Building, did -- did you try to confuse
21 consumers that this beer, your beer,
22 actually that's Empire State Building beer?

23 MR. SHIMANOFF: Same objection.

24 Vague and ambiguous.

25 A. No, no, no. No. My intention at

1 M. LIANG

2 the time was try to sell my beer product. I
3 -- I -- I -- I -- I intend for the customer
4 to buy my beer, not to buy Empire State
5 Building.

6 Q. Can you -- can you elaborate why
7 do you -- what makes you believe that?

8 MR. SHIMANOFF: Same objection.

9 A. What -- what -- what my intention
10 was that for the client to -- to purchase my
11 beer, that is, they were purchasing
12 beverages. That has nothing to do with
13 Empire State Building. Empire State
14 Building is a building. It has nothing to
15 do with beverages.

16 Q. If your logo does not contain the
17 Empire State Building logo, what -- that --
18 if that design -- if you have a revised logo
19 without Empire State Building, will your
20 revised -- will your beer product with your
21 revised logo without Empire -- Empire State
22 Building make less sales than the -- your
23 current design than the -- the -- the --
24 the -- your sales with your current design
25 with Empire State Building?

1 M. LIANG

2 MR. SHIMANOFF: Objection.

3 Speculative.

4 A. That's -- that's impossible
5 because I focus on my -- my -- my -- the --
6 the drinks. I -- I'm not focusing on this
7 building.

8 Q. To the -- to your initial design
9 and the -- your best information and
10 knowledge, would a consumer similar in your
11 situation choose not to drink the beer with
12 the same type of quality -- same taste of --
13 the taste and quality but without Empire
14 State Building logo in your trademark --

15 MR. SHIMANOFF: Objection -- are
16 you done?

17 MR. YAN: No.

18 MR. SHIMANOFF: Sorry.

19 Q. -- than drink the beer with the --
20 your trademark, current trademark with
21 Empire State Building -- Building logo in
22 your trademark?

23 MR. SHIMANOFF: Objection.

24 Improper opinion; speculative; lack of
25 personal knowledge; hypothetical.

1 M. LIANG

2 A. That's a -- that -- that's
3 unreasonable. That -- it -- if there's no
4 such building on the logo, there -- there
5 could -- there's still consume my beer.
6 It's the -- it's the same thing. This
7 building only symbolizes the upward
8 attitude, spirit.

9 Q. When you designed this logo, or
10 when you register this trademark, did you
11 intend to attract consumers to drink your
12 beer because your trademark -- my -- because
13 the inside of trademark -- because of
14 trademark -- because of the inside of the
15 trademark, there's a logo that might
16 resemble similar of the Empire State
17 Building?

18 A. No.

19 Q. Now, come back again, why did you
20 put this building logo in your trademark,
21 and in the description of your trademark
22 registration you said this building logo
23 resembles Empire State Building?

24 A. The -- my intention to put a -- a
25 -- a building in there that resembles the

1 M. LIANG

2 Empire State Building is simply because the
3 -- the building is -- is such an emblem of
4 New York City, as a -- as a city of
5 immigration, in upward spirit, and -- and
6 full of urban culture.

7 (Whereupon, an off-the-record
8 discussion was held.)

9 Q. Mr. Liang, you already said that
10 -- that the building logo, the actual image
11 of building logo in your trademark does not
12 look the same as the -- the Empire State
13 Building logo. Would it change -- would you
14 -- this way -- Mr. Liang, you said that --
15 that -- that the building logo in your
16 trademark registration does not look the
17 same as the -- the Empire State Building
18 logo, correct?

19 MR. SHIMANOFF: Objection.

20 Mischaracterizes his prior testimony.

21 A. Right. It's -- it's different but
22 if -- if you think it's the same, then --
23 then that's what you think. But I -- I
24 think differently.

25 Q. You -- in your description of the

1 M. LIANG

2 registration for trademark, you mentioned
3 that -- that logo design your trademark
4 resembles some sort of the -- the Empire
5 State Building. Would -- would it change
6 you -- change your view if you -- in your
7 description you describe this building logo
8 as resemblance like a World Trade Center
9 building?

10 MR. SHIMANOFF: Objection. Vague
11 and ambiguous; hypothetical; opinion;
12 speculative. I don't even understand
13 the question to be frank.

14 MR. YAN: Let me try to do it
15 again.

16 MR. SHIMANOFF: Thank you.

17 Q. If you change your description of
18 trademark registration from resemble -- this
19 logo resembles -- resemblance of Empire
20 State Building to -- resemblance -- in your
21 trademark description, you said that -- that
22 that's the -- this building logo inside the
23 trademark resembles Empire State Building.
24 Would it change your impression of this logo
25 if the description is changed to resembles

1 M. LIANG

2 as World Trade -- as the World Trade Center
3 building?

4 MR. SHIMANOFF: Same objection.

5 A. Changing my impression? At -- at
6 the time, this architecture is just a -- a
7 -- a -- a building that we're using -- World
8 Trade Center and Empire State Building as
9 references.

10 Q. Because you already testified --
11 in the -- you -- you -- you testified
12 previously saying this logo inside your
13 trademark could be similar to Empire State
14 Building, if somebody tell you, say that
15 this Empire -- Empire State Building?

16 MR. SHIMANOFF: Object.

17 Mischaracterize his prior testimony.

18 It's also leading, to the extent that
19 was the question.

20 A. As long you say it they look
21 alike, then that's your opinion. I -- I
22 cannot alter your opinion.

23 Q. If someone tell you this building
24 resembles World Trade Center, will you
25 imagine that logo looks like World Trade

1 M. LIANG

2 Center?

3 MR. SHIMANOFF: Same objections.

4 A. Well, it -- it depends on which
5 perspective -- perspective that you're
6 viewing it.

7 Q. Whatever perspective you can tell
8 us?

9 MR. SHIMANOFF: Same objections.

10 A. Which -- the --

11 THE INTERPRETER: (Conversation in
12 Chinese with the witness.)

13 The witness -- the witness said
14 that, if you say it looks like the WTC,
15 that -- it doesn't really look like the
16 WTC.

17 I -- just make a note that -- that
18 maybe the counsel in the beginning
19 should instruct the witness to break --
20 break down his answers --

21 MR. YAN: Yes.

22 THE INTERPRETER: -- because the
23 witness says that interpreter's
24 interrupting him -- because the
25 interrupter would like to make a note

1 M. LIANG

2 that counsel in the beginning should
3 instruct the witness to break down his
4 answers shortly.

5 Q. Please continue.

6 A. If you said that it's WTC, it --
7 it doesn't really look like WTC. But if you
8 say it resembles Empire State Building, it
9 could.

10 Q. If somebody never been World -- in
11 World Trade Center, if somebody tell that's
12 World Trade Center, would that person also
13 take the -- that feeling that's World Trade
14 Center?

15 MR. SHIMANOFF: Same objections.

16 A. Then they -- he will -- would --
17 he will -- he will -- would think that it's
18 the World Trade Center.

19 MR. YAN: That's the Applicant
20 Number 8.

21 (Whereupon, the aforementioned
22 Trademark Electronic Search System (2
23 pages) was marked as Applicant's
24 Exhibit 8 for identification as of this
25 date by the Reporter.)

1 M. LIANG

2 Q. (Perusing document.)

3 Since the trademark application by
4 one of the registrants to register trademark
5 with that kind of logo in that page --

6 MR. SHIMANOFF: Just -- go ahead.

7 Q. -- have you seen any logos in that
8 page?

9 A. (Perusing document.)

10 Yes.

11 Q. Have you seen the building
12 designed in that page?

13 A. Yes.

14 Q. Does that building logo resembles
15 any buildings in New York City?

16 A. A little -- a little bit. It
17 looks a little bit alike, a little.

18 Q. Which building?

19 A. I -- I cannot be specified --
20 specific but I -- I've seen such building in
21 the city.

22 Q. In the description of this mark
23 saying that -- in the description of this
24 trademark registration saying that this
25 design of the building shows the Empire

1 M. LIANG

2 State Building -- the design of the building
3 logo resembles the Empire State Building
4 surrounded by small buildings?

5 MR. SHIMANOFF: I just want to say
6 objection to the extent it
7 mischaracterizes the document. I also
8 don't think there's been any foundation
9 for this document.

10 You can answer the question.

11 Q. Mr. Liang, when you register
12 trademark, did you do a trademark search?

13 THE INTERPRETER: (Starts
14 translating question.)

15 MR. YAN: Search. Search.

16 THE INTERPRETER: (Continues
17 translating question.)

18 A. I have a -- I have a team. And --
19 and then there's a specific design company
20 who help me to design.

21 Q. Let me clarify. When I said a
22 search, is did you search or retain anyone
23 to search trademark that's similar to your
24 trademark?

25 A. I didn't. We were just looking

1 M. LIANG

2 for references. We're looking for some of
3 the cityscapes as references.

4 Q. When you -- before you registered
5 your trademark, did you retain a counsel or
6 your -- anyone to find out if there's any
7 trademark that's similar your trademark that
8 prevents your registration?

9 A. Our -- our team had conduct some
10 research on it.

11 Q. When your team -- when you or your
12 team did research, did you find the
13 trademark registration represented by
14 Applicant's Number 8?

15 THE INTERPRETER: Can you read
16 back?

17 (Whereupon, a portion of the
18 testimony was read back.)

19 A. No. I don't know why. No. We --
20 we haven't done any search.

21 (Whereupon, an off-the-record
22 discussion was held, and a short recess
23 was taken.)

24 MR. SHIMANOFF: Can you read back
25 the last question, please.

1 M. LIANG

2 (Whereupon, a portion of the
3 testimony was read back.)

4 Q. Mr. Liang, do you have any -- you
5 -- you want to correct your previous answer
6 to whether or not you did any -- you or your
7 team did a search on trademarks that are
8 similar to your trademarks?

9 A. Yes, we -- we -- we did.

10 Q. Is this Applicant's Number 8 a
11 true and accurate copy you, or your team, or
12 your attend counsel print on a website of
13 Trademark Electronic Search System?

14 A. No, we only use it for reference.

15 Q. So, is this the true and accurate
16 copy of the printout you, your team, or your
17 counsel download from the Trademark
18 Electronic Search System?

19 THE INTERPRETER: (Starts
20 translating question.

21 MR. YAN: Copy.

22 THE INTERPRETER: (Continues
23 translating question.)

24 A. No, we -- we -- we only use that
25 as a reference. We -- we didn't make copy

1 M. LIANG

2 of it.

3 Q. So, where is this copy from?

4 A. This is -- this, a registration.
5 This is not ours.

6 Q. I understand you do not understand
7 English but is this the one -- look at image
8 -- does that image bring you any memory?

9 A. Yes. We've -- we've seen -- we've
10 seen this copy which is the -- we just
11 looked at it for reference.

12 Q. That copy the same as you present
13 today?

14 A. It should be this one.

15 Q. (Perusing document.)

16 Let me bring your attention to
17 this Applicant's Number 8. Since the -- the
18 page -- in the second page of description --
19 this logo saying that the building logo is
20 the -- shows a fanciful design of Empire
21 State Building. But this trademark with
22 Empire State Building logo is used for
23 envelopes and the -- first used in commerce
24 March 27, 1968.

25 MR. SHIMANOFF: I'm sorry.

1 M. LIANG

2 There's an objection.

3 Counsel is testifying about use
4 and things like that. If the client
5 counsel wants to ask him about what
6 appears on the face of the document,
7 that's one thing but counsel right now
8 is testifying about this mark. I don't
9 think he can do that nor is there any
10 foundation that his client has any
11 information about this document.

12 MR. YAN: Let me rephrase it.

13 MR. SHIMANOFF: Thank you.

14 Q. And this -- that's the -- this one
15 is official copy from the business records
16 from Trademark Electronic Search System.
17 And I just ask him a question about a --
18 regarding the trademark. Sir, this official
19 records from the Trademark Electronic System
20 (sic) saying that the logo you saw in the --
21 the -- on the Applicant's Number 8 is used
22 in selling the products of envelopes?

23 MR. SHIMANOFF: Again, objection
24 but continue.

25 Q. And would the Empire State

1 M. LIANG

2 Building logo in envelopes makes more likely
3 to buy envelopes or different?

4 MR. SHIMANOFF: Same objections as
5 I had for those other similar questions
6 but I am just going to preserve that
7 objection anytime this same question is
8 asked. That calls for personal
9 speculative opinion.

10 A. I don't think so.

11 Q. When you see the logo in envelopes
12 bearing the logos in Applicant's Number 8,
13 would you be confused that -- that envelopes
14 actually is produced, manufactured, and
15 marketed by Empire State Building?

16 MR. SHIMANOFF: Same objections.

17 A. I don't think so.

18 Q. Were you -- because -- because
19 this logo in ordinary envelopes, would the
20 -- make the Empire State Building no
21 difference to you?

22 MR. SHIMANOFF: Same objections.

23 A. I won't.

24 Q. Because of this -- this logo in
25 Applicant's Number 8, would this logo make

1 M. LIANG

2 you believe that Empire State Building --
3 Building now -- now comes into a trade of
4 making, manufacturing, and marketing
5 envelopes?

6 MR. SHIMANOFF: Same objections.

7 A. No.

8 Q. So, to you, what does Empire State
9 Building mean to you in the business?

10 A. It has nothing to do with me.

11 Q. Now, coming back to your own logo,
12 because of your logo, what other consumer --
13 where ordinary consumers mistakenly believe
14 Empire State Building now in the trade of
15 produce, brewing, and marketing beer?

16 MR. SHIMANOFF: Same objections.

17 A. That's -- that's impossible.

18 Q. And because the -- there's some --
19 your beer products bearing your trademark
20 with the -- the building logos -- you
21 describe, for example -- because the --
22 because your beer -- because the beer
23 products bearing your trademark with the
24 Empire State Building logo with the logo
25 that you described as Empire State Building

1 M. LIANG

2 likely to confuse -- likely to confuse the
3 -- the ordinary consumers that Empire State
4 Building is behind you?

5 MR. SHIMANOFF: Same objections.

6 A. No, never. It never occurred to
7 me.

8 Q. Do you or did you ever intend to
9 have this -- have your trademark with Empire
10 State Building logo in selling your beer to
11 confuse ordinary consumers that Empire State
12 Building is -- either sponsored you or
13 behind you?

14 A. No.

15 Q. Do you or did you ever intend to
16 use the trademark -- the building logo you
17 described as Empire State Building in the
18 trademark to make the consumers believe that
19 Empire State Building licensed to you to use
20 the Empire State Building trademark?

21 A. No.

22 Q. You might not never intend but
23 would a consumer be confused because of your
24 trademark --

25 MR. SHIMANOFF: Same objections.

1 M. LIANG

2 Q. -- they saw that they would
3 believe that's the -- impacts their building
4 -- it's your partner or work with you to
5 sell your beer?

6 MR. SHIMANOFF: Same objections.

7 A. Empire State Building is a tourist
8 site. And -- and I'm only in the business
9 of beers. But my clients won't drink my
10 beer only because there's -- because Empire
11 State Building.

12 Q. Is there any possibility that
13 because of use -- because you use your
14 trademark with the -- the building logo --
15 you described the logo as Empire State --
16 resembles Empire State Building makes the
17 Empire State Building no difference to
18 consumers?

19 MR. SHIMANOFF: Same objections.

20 Vague and ambiguous.

21 A. No, but it has nothing to do with
22 me. So, whether yes or no, for -- that's no
23 relation to me.

24 Q. During your previous testimony,
25 you once agreed that the Empire State

1 M. LIANG

2 Building is famous. Can you clarify what
3 kind of famous to what kind of geographic
4 area or what kind of trade?

5 A. It -- it is -- it is famous that
6 it -- it is famous tourist site of New York
7 City. That's about it. It -- it has no
8 bearing of the -- on the beverages and beer
9 business that I engage in.

10 Q. Do you intend to use the -- the --
11 the famousness of Empire State Building in
12 tourism of or -- what's the word -- tourism
13 or real estate --

14 MR. YAN: Can you?

15 (Whereupon, a portion of the
16 testimony was read back.)

17 Q. -- to change the consumer behavior
18 in marketing your beer product with your
19 trademark?

20 THE INTERPRETER: (Starts to
21 translate the question.)

22 MR. YAN: Consumer behavior.

23 THE INTERPRETER: (Continues
24 translating the question.)

25 MR. SHIMANOFF: I just want to

1 M. LIANG

2 note for the record this is the third
3 or fourth time that Applicant's counsel
4 has corrected the translator
5 mid-translation either in English or
6 Chinese.

7 MR. YAN: Read it back.

8 THE INTERPRETER: Yes, I think the
9 interpreter is able to --

10 MR. YAN: Richard, if you can read
11 it again.

12 (Whereupon, a portion of the
13 testimony was read back.)

14 A. No. No, I did not. It -- it has
15 no such value because our marketing is -- is
16 totally different from theirs.

17 Q. How much value of Empire State
18 Building logo that would help you to promote
19 your beer products in your own trademark?

20 MR. SHIMANOFF: Same objections as
21 before.

22 A. It has no -- it has no value.

23 Q. But in the combination of the
24 Empire State Building logo within your
25 trademark, what's that value for?

1 M. LIANG

2 A. No, no value.

3 Q. Can you clarify this answer with
4 your previous answer saying that the
5 building design gave you some upward
6 aspirations?

7 A. I can clarify. This has nothing
8 to do with Empire State -- State Building
9 itself. It's just the -- the image of a
10 architecture is -- is -- manifests a -- a --
11 a urban culture. It has nothing to do
12 Empire State Building itself.

13 Q. In your description your trademark
14 registration saying that since Empire State
15 Building is kind of -- give the -- the other
16 the other consumers a type of the -- the --
17 the location of the building, or you suggest
18 a connection to Empire State Building?

19 MR. SHIMANOFF: Object. Vague and
20 ambiguous. I'm not sure I understand
21 the question, David.

22 MR. YAN: Then let me.

23 Q. When you describe in your
24 registration for trademark, you said this
25 building logo resemblance Empire State

1 M. LIANG

2 Building. Did you -- do you mean it's a
3 location of your trademark, or did you
4 suggest -- any suggestion -- do you suggest
5 any connection of trademark with the Empire
6 State Building?

7 MR. SHIMANOFF: Leading.

8 THE INTERPRETER: (Translates the
9 question.)

10 MR. YAN: Richard, can you just
11 read it one more time?

12 MR. SHIMANOFF: David, there's a
13 pending question. The interpreter has
14 interpreted it.

15 MR. YAN: Yes, but if Richard read
16 the whole question again, read --

17 MR. SHIMANOFF: Wait for the
18 answer. There's been a question.
19 There's been a translation. We need an
20 answer. That's the Federal Rules,
21 David. He can't not answer. You can't
22 go to the next. It's --

23 MR. YAN: I did not --

24 MR. SHIMANOFF: I understand.

25 MR. YAN: I just say the

1 M. LIANG

2 translation can --

3 MR. SHIMANOFF: Well, make your
4 objection but let's see.

5 MR. YAN: I want Richard to read
6 my question again.

7 MR. SHIMANOFF: We need an answer
8 first, David. Then you can repeat your
9 question if you need to.

10 THE INTERPRETER: (Asks the
11 witness the question in Chinese.)

12 A. No.

13 MR. YAN: Richard, can you read my
14 question, please.

15 (Whereupon, a portion of the
16 testimony was read back.)

17 Q. In your registration of the
18 trademark, you describe that the logo of the
19 building logo in your trademark resembles
20 Empire State Building. Did you mean -- did
21 you suggest the location of a trademark New
22 York City, or did you suggest the connection
23 of a trademark with Empire State Building?

24 MR. SHIMANOFF: Leading.

25 THE INTERPRETER: Yeah, I'm going

1 M. LIANG

2 to do my best.

3 A. Neither.

4 Q. But why did you use, why did you
5 describe the building logo resembles Empire
6 State Building?

7 A. I -- I -- I meant -- I -- I meant
8 -- I mean it to resemble Empire State
9 Building as in the -- it -- as in a upward
10 aspiration spirit, not the Empire State
11 Building itself.

12 Q. Will the ordinary consumer be
13 confused that you -- your trademark is
14 connected with Empire State Building?

15 MR. SHIMANOFF: Same objection as
16 before. All inadmissible.

17 I'm sorry. I'm just getting a
18 little frustrated. We've been sitting
19 here two hours with questions on
20 speculation, and no questions on the
21 facts underlying this suit. It's very
22 frustrating, and a waste of time. I
23 apologize for my little outburst here.

24 Objection for the record.

25 Please proceed.

1 M. LIANG

2 THE INTERPRETER: What was his
3 question?

4 MR. YAN: Do you want to?

5 (Whereupon, a portion of the
6 testimony was read back.)

7 A. Oh, that's impossible.

8 Q. (in English) Beer.

9 A. It's beer. It's -- it's beer, and
10 New York City.

11 THE INTERPRETER: The witness said
12 in English.

13 Q. Mr. Liang, before you registered
14 your trademark, did you see any beer product
15 bearing with the Empire State Building logo?

16 A. Previously possibly I've seen
17 beverages that -- that has such images.

18 Q. I mean beer.

19 A. I never seen it.

20 Q. After you registered this
21 trademark, have you ever seen any beer
22 product bearing -- with the beers with the
23 Empire State Building logo?

24 A. No.

25 Q. Have you ever been in Empire State

1 M. LIANG

2 Building?

3 A. I -- I -- I just saw it from the
4 outside.

5 Q. Did you ever go inside the Empire
6 State Building?

7 A. No.

8 Q. Do you know, to the best of
9 information, knowledge, where do the Empire
10 State Building logos in Exhibit Number 3 and
11 Exhibit Number 7 ever been used?

12 A. You -- you -- you mean, did I use
13 it, or other people use it?

14 Q. Other people use it.

15 A. I've -- I've -- I've seen -- I've
16 seen -- I've seen many people used it.

17 Q. Do any of these products have any
18 similarity to your beer product?

19 MR. SHIMANOFF: The products he's
20 seen, or --

21 MR. YAN: Yes.

22 MR. SHIMANOFF: -- generally?

23 A. Say it would appear on packages,
24 it would appear on beverages. So, it's --
25 it's not the same. I -- I -- I've seen it

1 M. LIANG

2 on packaging.

3 Q. What do you mean beverage?

4 A. No. I meant packaging, not
5 beverage.

6 Q. Have you ever intend to use the
7 trademark other than in the area of beer
8 products and the beverage?

9 A. On -- on beverages.

10 MR. YAN: I have no further
11 questions.

12 You want to switch seats?

13 MR. SHIMANOFF: I'll be very quick
14 I believe, David.

15 (Whereupon, an off-the-record
16 discussion was held.)

17 EXAMINATION BY

18 MR. SHIMANOFF:

19 Q. Mr. Liang, prior to the break
20 today, you testified that neither you nor
21 your team conducted a search of the
22 trademark office records for marks that may
23 be similar to yours; is that correct?

24 A. We -- we did. That's why I -- I
25 correct myself afterwards.

1 M. LIANG

2 Q. During the break, did you speak
3 with your counsel about that subject matter?

4 A. Initially, I -- I -- we -- I had
5 already mentioned that we need to use
6 references such as cityscape, different
7 buildings, Empire State Building, also
8 Eiffel Tower as references. And you -- you
9 -- you knew that.

10 Q. Yes. Perhaps you didn't
11 understand my question.

12 My question is, during the break
13 we took about an hour ago, did you speak to
14 your counsel about whether or not you did a
15 trademark search?

16 A. No. We -- we never -- we never
17 discuss this.

18 Q. So, how did you come to change
19 your answer after the break, and how did
20 your attorney know to ask you the question
21 again?

22 A. That -- that was -- that was the
23 last question before the break. That is --
24 that is why I -- I remember it clearly
25 because I -- everyone knew that and that --

1 M. LIANG

2 that -- because I remember clearly that my
3 team did conduct a search.

4 Q. Did you tell your attorney to ask
5 you the question again so that you can
6 clarify your answer that you remembered?

7 A. I didn't.

8 Q. So, do you have any idea why your
9 attorney knew to ask the question again, and
10 you would have a different answer?

11 A. The -- the questions imposed on me
12 by my counsel, that's his business. And --
13 and my thoughts is my thought.

14 And also, told -- told him --
15 (indicating) --

16 THE INTERPRETER: He's pointing at
17 the court reporter.

18 THE WITNESS: (in English) Right.

19 A. -- I -- I -- I told him that I
20 misspoke.

21 (Whereupon, an off-the-record
22 discussion was held.)

23 A. That's the last question. That's
24 why I remembered.

25 THE WITNESS: I told you -- I told

1 M. LIANG

2 you. You forgot.

3 MR. YAN: Because he's not the
4 witness. He's the court reporter. He
5 can't testify for you. Translate that.

6 THE INTERPRETER: (Translating.)

7 Q. When you did your trademark
8 search, was the logo in Exhibit Number 8 the
9 only logo you found that had a building
10 similar to the Empire State Building?

11 A. We found many.

12 Q. Can you recall any others?

13 A. It's a -- it's been -- it's been a
14 long time ago. So, I can't recall exactly
15 but there were many containing buildings
16 such as this, and also World Trade Centers.
17 There are many images.

18 Q. Do you have any personal knowledge
19 about the use of this logo in the
20 marketplace?

21 A. The -- this product, there are --
22 possibly, it was used on envelopes.

23 Q. Let me ask the question again, Mr.
24 Liang. Do you have any personal knowledge
25 of any use in the marketplace of the logo in

1 M. LIANG

2 Exhibit 8?

3 A. This -- this -- this trademark?
4 Using this? This logo? I'm not sure. I
5 don't know.

6 Q. So, you don't have any personal
7 knowledge of the use of this mark in the
8 actual marketplace; is that correct?

9 A. No -- no -- no, I -- I know I've
10 seen many -- I've -- I've seen many products
11 that -- that had this kind of logo printed
12 on it.

13 Q. (Perusing document.)
14 I'm asking specifically about this
15 logo in Exhibit Number 8 (indicating).
16 This trademark, have you seen this in the
17 marketplace, or do you have any personal
18 knowledge of the use of this mark in the
19 marketplace?

20 A. (Perusing document.)

21 Personally, no.

22 Q. So, your knowledge of this
23 specific trademark in Exhibit 8 only comes
24 from what you see on the paper in front of
25 you; is that correct?

1 M. LIANG

2 A. Right.

3 Q. All your testimony today
4 concerning what marks or designs may look
5 similar or be confusing, that is just your
6 personal opinion; is that correct?

7 A. Whatever you ask me, I will
8 provide you with my personal opinion.

9 Q. All your testimony today about the
10 meaning or significance of your logo is also
11 based on your personal opinion, correct?

12 A. You -- you are aware previously
13 that -- that this is done together by a
14 team. Now that you're asking my personal
15 opinion, this is incorrect.

16 Q. You have not surveyed any
17 consumers to find out what they think, have
18 you?

19 A. I -- I don't need to do that
20 myself because this is the -- because this
21 -- this the logo belongs to our team.

22 Q. So, this is the opinion of you and
23 your team; is that correct?

24 A. You asked -- earlier, you asked me
25 about -- about what -- what I said today.

1 M. LIANG

2 Of course today, regarding these images is
3 my personal opinion. But regarding that
4 logo, it -- it's a -- it -- it belong to our
5 team. So, it's a -- it's the opinion of our
6 team.

7 MR. SHIMANOFF: Thank you. No
8 further questions.

9 Redirect, David?

10 MR. YAN: No.

11 MR. SHIMANOFF: The same thing,
12 we're not waiving the requirements
13 under 2.123F.

14 MR. YAN: I make TTAB to admit
15 Applicant's Exhibits 1 through 8 into
16 the evidence, and seal the evidence
17 with the transcripts.

18 (Continued on next page to include
19 jurat.)

20

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1 M. LIANG

2 MR. SHIMANOFF: When we have,
3 obviously, our objections to Exhibit 8,
4 and Exhibit 7 also which were made on
5 the record.

6 (Whereupon, at 3:13 p.m., the
7 examination of this witness was
8 concluded.)

9

10 _____
MICHAEL LIANG

11

12

13 Subscribed and sworn to before me
14 this _____ day of _____ 20__.

15

16 _____
NOTARY PUBLIC

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1 M. LIANG
2 E X H I B I T S

3 APPLICANT EXHIBITS:

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1 M. LIANG

2 C E R T I F I C A T E

3
4 STATE OF NEW YORK)
5 : SS.:
6 COUNTY OF KINGS)

7 I, RICHARD AURELIO, a Notary Public for
8 and within the State of New York, do hereby
9 certify:

10 That the witness whose examination is
11 hereinbefore set forth was duly sworn and
12 that such examination is a true record of
13 the testimony given by that witness.

14 I further certify that I am not related
15 to any of the parties to this action by
16 blood or by marriage and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 30th day of May 2015.

20
21
22 

23 _____
24 RICHARD AURELIO
25

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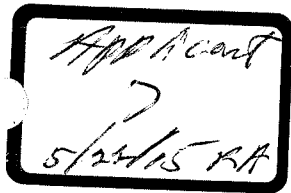
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ESTTA Tracking number:

ESTTA459494

Filing date:

03/01/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Empire State Building Company L.L.C.
Granted to Date of previous extension	04/04/2012
Address	c/o Malkin Holdings, LLC 60 East 42nd St New York, NY 10165 UNITED STATES
Attorney information	Maya L. Tarr Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES trademark@cll.com, wmb@cll.com, mxt@cll.com Phone:212-790-9200

Applicant Information

Application No	85213453	Publication date	12/06/2011
Opposition Filing Date	03/01/2012	Opposition Period Ends	04/04/2012
Applicant	Liang, Michael 55-25 98th Place, Apt. 3C Corona, NY 11368 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Alcohol-free beers; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; De-alcoholised beer; Extracts of hops for making beer; Flavored beers; Ginger beer; Hop extracts for manufacturing beer; Imitation beer; Malt beer; Malt extracts for making beer; Malt liquor; Non-alcoholic beer; Pale beer; Porter

Grounds for Opposition


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

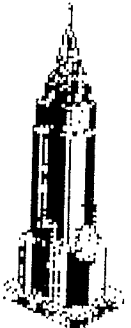
Marks Cited by Opposer as Basis for Opposition

U.S. Registration	2411972	Application Date	05/13/1999
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No.			
Registration Date	12/12/2000	Foreign Priority Date	NONE
Word Mark	EMPIRE STATE BUILDING		
Design Mark	<p style="text-align: center;">EMPIRE STATE BUILDING</p>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 entertainment services, namely, providing observation decks in a skyscraper for purposes of sightseeing		

U.S. Registration No.	2413667	Application Date	05/13/1999
Registration Date	12/19/2000	Foreign Priority Date	NONE
Word Mark	EMPIRE STATE BUILDING		
Design Mark	<p style="text-align: center;">EMPIRE STATE BUILDING</p>		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 REAL ESTATE SERVICES, NAMELY THE MANAGEMENT AND LEASING OF REAL ESTATE		

U.S. Registration No.	2429297	Application Date	05/13/1999
Registration Date	02/20/2001	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of	The mark consists of the shape of the exterior of a skyscraper with a pointed,		

Mark	spindled top.		
Goods/Services	Class 036. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 REAL ESTATE SERVICES, NAMELY THE MANAGEMENT AND LEASING OF REAL ESTATE		
U.S. Registration No.	2430828	Application Date	05/13/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of the shape of the exterior of a skyscraper with a pointed, spindled top.		
Goods/Services	Class 041. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 ENTERTAINMENT SERVICES, NAMELY, PROVIDING OBSERVATION DECKS IN A SKYSCRAPER FOR PURPOSES OF SIGHTSEEING		

Attachments	75705741#TMSN.gif (1 page)(bytes) 75705740#TMSN.gif (1 page)(bytes) 75705772#TMSN.gif (1 page)(bytes) 75705756#TMSN.gif (1 page)(bytes) NYC BEER LAGER NOO.pdf (6 pages)(69284 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Maya L. Tarr/
Name	Maya L. Tarr
Date	03/01/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

EMPIRE STATE BUILDING COMPANY L.L.C.,

Opposer,

v.

MICHAEL LIANG,

Applicant.

X

Opposition No.

NOTICE OF OPPOSITION

X

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, Empire State Building Company L.L.C. ("Opposer"), a New York limited liability company with offices at c/o Malkin Holdings, 60 East 42nd Street, New York, New York 10165, believes that it will be damaged by registration of the following NYC BEER LAGER and Design mark:

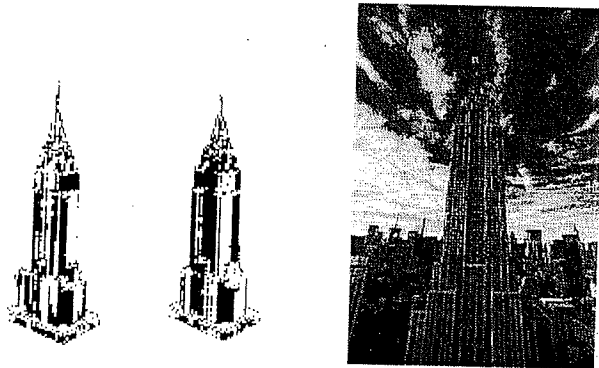


("Applicant's Mark") for "Alcohol-free beers; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer;

Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; De-alcoholised beer; Extracts of hops for making beer; Flavored beers; Ginger beer; Hop extracts for manufacturing beer; Imitation beer; Malt beer; Malt extracts for making beer; Malt liquor; Non-alcoholic beer; Pale beer; Porter” in International Class 32 (“Applicant’s Goods”), as shown in intent to use Application Serial No. 85/213,453 (the “Application”), and having been granted extensions of time to oppose up to and including April 4, 2012, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Since long prior to January 8, 2011, Applicant’s filing date and constructive first use date, Opposer, its predecessors, and its affiliated and related entities, and/or licensees have used the word mark EMPIRE STATE BUILDING and various marks depicting the visual equivalent of the world-renowned Empire State Building, which is located in New York City, including, without limitation, the following distinctive stylizations:



, alone or with other word, letter and/or design elements (“Opposer’s Empire State Building Marks”), in connection with entertainment services, real estate services and a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages.

2. Opposer owns U.S. federal registrations for Opposer’s Empire State Building Marks in International Classes 36 and 41, namely, Registration Nos. 2411972, 2413667, 2429297 and 2430828, which are all incontestable.

3. Since long prior to January 8, 2011, Applicant's constructive first use date, Opposer, its predecessors, and their affiliated and related entities, and/or licensees have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's Empire State Building Marks, including, but not limited to, entertainment services, real estate services and a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages, and have offered such goods and rendered such services in commerce.

4. Opposer has built up highly valuable goodwill in Opposer's Empire State Building Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

5. On January 8, 2011, Applicant filed the Application for Applicant's Mark for Applicant's Goods, based on an intent to use.

6. Upon information and belief, Applicant did not use Applicant's Mark in United States commerce for any of Applicant's Goods covered in the Application prior to its constructive first use date of January 8, 2011.

7. The description of Applicant's Mark in the Application indicates that "The mark consists of a building resembling the Empire State Building surrounded by three concentric circles." Moreover, the word elements of Applicant's Mark include only the descriptive or generic terms "NYC," "BEER," and "LAGER," which Applicant has disclaimed in the Application. Upon information and belief, Applicant intends to trade on the enormous good will of Opposer by using a design of the "Empire State Building" in combination with the geographic term "NYC," which is the abbreviation for New York City, in Applicant's Mark.

8. The dominant feature of Applicant's Mark is the image of the Empire State Building.

9. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's Empire State Building Marks.

10. Applicant's Mark so resembles Opposer's Empire State Building Marks as to be likely, when used in connection with Applicant's Goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's Goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

11. Opposer's Empire State Building Marks are distinctive and famous and were so prior to January 8, 2011, Applicant's constructive first use date of Applicant's Mark for Applicant's Goods. Registration of Applicant's Mark will also injure Opposer by causing a likelihood of dilution by blurring of the distinctive quality of Opposer's Empire State Building Marks.

12. Applicant's Mark violates Section 2(a) of the Lanham Act in that it would falsely suggest a connection between Applicant and Opposer. More specifically, Applicant's Mark violates Section 2(a) of the Lanham Act because (a) Applicant's Mark contains as an important element of its mark a design of Opposer's famous Empire State Building previously used by Opposer; (b) Applicant's Mark would be recognized as being associated with the Empire State Building in that Applicant's Mark points uniquely and unmistakably to that building; (c) Opposer is not connected with the activities performed by Applicant under Applicant's Mark;

and (4) Opposer's identity is of sufficient fame or reputation that a connection with Opposer would be presumed when Applicant's Mark is used with Applicant's Goods.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding William M. Borchard, Mary L. Kevlin, and Maya L. Tarr (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
March 1, 2012

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Maya L. Tarr/

William M. Borchard

Mary L. Kevlin

Maya L. Tarr

1133 Avenue of the Americas
New York, New York 10036
(212)790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 1, 2012, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's Attorney of Record, David Yan, Esq., Law Offices of David Yan, 13620 38th Avenue Suite 11E, Flushing, New York 11354-4232.

/Maya L. Tarr/
Maya L. Tarr



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Word Mark	NY
Goods and Services	IC 016. US 037. G & S: Envelopes. FIRST USE: 19680327. FIRST USE IN COMMERCE: 19680327
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	06.07.01 - Skylines 07.09.25 - Gravestones; Leaning Tower of Pisa; Space needle; Tombstones; Totem poles 20.03.03 - Envelopes 26.11.01 - Rectangles as carriers or rectangles as single or multiple line borders
Serial Number	73381231
Filing Date	August 23, 1982
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 10, 1983
Registration Number	1247058
Registration Date	August 2, 1983
Owner	(REGISTRANT) New York Envelope Corp. CORPORATION NEW YORK 29-10 Hunterspoint Ave. Long Island City NEW YORK 11101 (LAST LISTED OWNER) NE OPCO, INC. CORPORATION DELAWARE 3211 INTERNET BOULEVARD, SUITE 200 FRISCO TEXAS 75034
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	MARK N MUTTERPERL



Disclaimer No claim is made to the exclusive right to use the illustration of the goods, envelopes, or the geographic abbreviation "NY", apart from the mark as shown.

Description of Mark The mark shows a fanciful design of the Empire State Building surrounded by smaller buildings and envelopes and the letters "N" and "Y" in a rectangle.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 8 (6-YR). SECTION 8(10-YR) 20031112.

Renewal 1ST RENEWAL 20031112

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